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Preface

On 16 September 2014, the European Parliament in its plenary session in Strasbourg ratified the EU-Ukraine Association Agreement (hereinafter, EUAA). The Parliament of Ukraine conducted synchronous ratification of the EUAA. EU and Ukrainian citizens could follow the ratification process during the live broadcast on television. This was the culmination of more than seven years of sometimes dramatic negotiations conducted by a multitude of diplomats, government officials, experts and negotiators. A new page of European history unfolded.

Implementation of the trade part of the EUAA may be postponed until 2015, but the effects of the EUAA will be felt relatively soon. The predictability and degree of legal certainty that it represents will attract investment and bilateral trade will grow. In the course of the ratification process, Ukraine's President Petro Poroshenko thanked the EU "*for the multimillion bonus demonstrated in support of Ukraine in difficult times*" and EU Commissioner for Trade Karel De Gucht indicated that the EU will offer "*autonomous preferences*" to Kyiv so that Ukraine can enjoy an '*early harvest*' of greater exports to the EU "*as if the Agreement entered into force*".

According to the State Statistics Service of Ukraine, Ukrainian exports to the EU increased by almost 15% (to USD 9.476 billion) in the first half of 2014. The share of the EU market in the total exports from Ukraine increased to 33% in the first half of 2014, while in January–June 2013 it constituted 27%. Ukraine's Trade Representative, Mr. Valeriy Pyatnytskiy, notes that, in 2013, six regions of Ukraine exported to the EU more than to the Russian Federation. Over the past few months, 13 regions (out of 25) enjoyed more exports to the EU than to Russia. Trade is good, no matter where it is bound, and it is a positive force that will cement stability, peace, economic development and prosperity for Ukraine and the wider region.

The law firms of *FratiniVergano* (EU) and *Sergii Koziakov and Partners* (Ukraine) have decided to join forces to co-write this issue of Trade Perspectives® to celebrate this important moment of bilateral trade relations. Our firms have been cooperating for many years in the field of International Trade Law and European Law. We share the optimism of our respective governments, business constituencies and people in embracing the EUAA. We stand ready to assist our clients in taking full advantage of the preferential terms of market access and look forward to continue working together.

Today's joint issue of Trade Perspectives® is the first of many future instances of EU-Ukraine focus. We hope that the information provided herein is of great value and use for all actors interested in EU-Ukraine trade relations. We look forward to hearing from you.

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The Parliaments of the EU and Ukraine ratify the EU-Ukraine Association Agreement

On 16 September 2014, the Parliaments of the EU and Ukraine ratified the EU-Ukraine Association Agreement (*i.e.*, EUAA), which includes the creation of a Deep and Comprehensive Free Trade Area (hereinafter, DCFTA) as a core element to address trade and trade-related matters between the EU and Ukraine. The DCFTA, which will likely not come into effect until 1 January 2016, provides market access opportunities for the EU and Ukraine *via* the progressive removal of customs tariffs and quotas. The DCFTA also creates conditions for aligning key sectors of the Ukrainian economy to EU standards by an extensive process of harmonisation of laws, norms and regulations in various trade-related sectors.

The EUAA is the first of a new generation of Association Agreements with Eastern Partnership countries (*i.e.*, Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine), and bears the objective to support political and socio-economic reforms in the partner countries. It replaces the 1998 EU-Ukraine Partnership and Cooperation Agreement. Negotiations of this comprehensive, ambitious and innovative Agreement between the EU and Ukraine were launched in March 2007. The bilateral talks on DCFTA as a core element of the EUAA were initiated in February 2008. On 19 July 2012, trade negotiators from both sides initialled the complete text (see Trade Perspectives, Issue No. 3 of 11 February 2011). However, the signing the EUAA was suspended by the former President of Ukraine Mr. Viktor Yanukovich in November 2013. Eventually, the EUAA was ratified by both parties on 16 September 2014. The completion of the EUAA signifies the gradual movement towards political association and economic integration between the EU and Ukraine.

Furthermore, on 3 April 2014, the European Parliament adopted a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on the reduction or elimination of customs duties on goods originating in Ukraine (hereinafter, the Resolution) by 531 votes to 68, with 20 abstentions. According to the Resolution, Ukraine is regarded as a priority partner country within the European Neighbourhood Policy and the Eastern Partnership. The unilateral elimination and reduction of customs duties aims at supporting Ukraine's economy in the context of its unprecedented security, political and economic challenges. This autonomous trade measure confers the same treatment offered by the EU in Annex IA to the EUAA, which represents a removal of 98.1% of custom duties in trade value. Moreover, according to the Joint Ministerial Statement on the Implementation of the EU-Ukraine Association Agreement/DCFTA issued by the EU, Ukraine and Russia, the implementation of the DCFTA will be delayed until 31 December 2015, which means that Ukraine is still guaranteed with the unilateral preferential treatment until the end of 2015. According to a recent report issued by the European Union Delegation to Ukraine on the impact of the autonomous trade measure and restrictions from Russia on exports, Ukrainian exports to the EU have increased by 25% in May and June 2014, after the Resolution was implemented, compared to the same period in 2014. It also indicated that the increased export to the EU almost exactly compensated the losses on the Russian side.

Trade between the EU and Ukraine accounts for 31.2% of Ukraine's total trade, but only 1.1% of the EU's total trade value. According to trade statistics, the EU has maintained a trade surplus with Ukraine for the past ten years. The DCFTA is expected to boost Ukraine's exports to the EU by EUR 1 billion. According to the Directorate General for Trade of the European Commission, Ukraine and the EU will eliminate 99.1% and 98.1% of customs duties in trade value, respectively. Tariffs on most industrial goods will be removed immediately, with exceptions for a few goods, in particular the products from the Ukrainian automotive sector, which enjoy a transitional period. As for agricultural goods, duty-free tariff rate quotas are granted to Ukraine for sensitive products such as, *inter alia*, cereals, pork, beef and poultry; while for other products, customs duties will be eliminated over a longer transitional period of around 10 years. It is estimated that the EU will remove import duties of EUR 487 million, while Ukraine will remove import duties of around EUR 391 million, but with longer transitional periods than the EU for certain goods. Furthermore, according to Article 31 of the EUAA, both Ukraine and the EU shall not institute or maintain any export duties, taxes or other measures having an equivalent effect, except for the existing export duties or measures listed by Ukraine, which shall be phased-out over a transitional period. The EUAA also contains specific provisions in Chapter 2 on 'Trade Remedies' allowing Ukraine to apply safeguard measures for 15 years on imported passenger cars under the tariff heading 8703 from the EU, which constitutes 12.5% of the Ukrainian market. This provision aims at protecting the Ukrainian automotive industry from the effects of tariff reduction in the EUAA.

As for non-tariff barriers, an important part of the EUAA deals with regulatory approximation and capacity building in a wide range of areas, *inter alia*, technical barriers to trade (hereinafter, TBT), sanitary and phytosanitary (hereinafter, SPS) measures, and customs procedures. In Chapter 3, 4 and 5, Ukraine agrees to align its TBT measures, SPS regulations and standards, and animal welfare legislation to those of the EU, which is a necessary step for the economic integration between the EU and Ukraine. Moreover, in Chapter 6 of the EUAA, both parties achieved an advancement in the freedom of establishment/investment in both services and non-services sectors. According to Article 86 paragraph 9 of the EUAA, establishment refers to a legal or natural person setting-up, including the acquisition of, a legal person, branches or representative offices in Ukraine and the EU. It is prescribed that National Treatment and Most Favoured Nation treatment shall be granted to establishment except in the sectors listed in Article 87 of the EUAA and the reservations made by Ukraine and EU Members in Annex XVI-A and Annex XVI-D to the EUAA. The sectors excluded by both parties are, *inter alia*, audio-visual services, transportation of goods and passengers within and between both parties' territory, and domestic and international air transport services, which falls under the bilateral Agreement on the Establishment of a Common Aviation Area. Ukraine makes reservations in 15 sectors such as, *inter alia*, forestry, medical services, postal and courier services, express delivery services, educational services and financial services. EU Member States may also jointly and separately make reservations in sectors such as agriculture, fishing, mining, media, energy and some service sectors such as, *inter alia*, professional services, financial services, distribution services, maritime services and transportation services.

More importantly, reservations are made through a negative list approach, meaning that all sectors not in the list are entitled to National Treatment and Most Favoured Nation treatment. This approach is unprecedented for the EU and guarantees automatic coverage for new services and future liberalisation in any sectors not listed as exceptions. Besides the liberalisation on the freedom of establishment, Ukraine and EU Members also make commitments on cross-border supply of services following the structure of the accession schedules of the General Agreement on Trade in Services. Moreover, legislative approximation in financial services, telecommunications services, postal and courier services and international maritime services should over time provide Ukrainian firms with greater market access to the EU once the approximation process has been completed. Correspondingly, EU investors will enjoy similar regulatory systems in Ukraine.

Energy has always been a hot issue between the EU and Ukraine. As for the freedom of establishment in the energy sector, the EU entered an important reservation, specifying that no National Treatment and Most Favoured Nation treatment shall be granted to juridical persons of Ukraine controlled by natural or juridical persons of a country that accounts for more than 5% of the EU's oil or natural gas imports, unless the EU provides such third country with comprehensive access to its energy sector in an economic integration agreement. According to Eurostat statistics for 2012, countries influenced by these reservations would be Russia, Saudi Arabia, Qatar, Libya and Kazakhstan, with Russia accounting for around 30% of the EU imports of primary energy products. The EU also requires Ukrainian energy transmission operators to obtain certification from the EU by demonstrating that granting the certification will not put at risk the security of energy supply in an EU Member State and/or the EU, in accordance with Article 11 of *Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity* and Article 11 of *Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas*.

The EUAA also encompasses issues such as government procurement, intellectual property, current payments and movement of capital, competition, transparency and sustainable development. It creates a dispute settlement mechanism based on the model of the WTO Dispute Settlement Understanding, but with faster procedures.

The ratification of the EUAA provides a wide range of opportunities for business stakeholders operating in both the EU and Ukraine, or for third countries' operators investing in the EU or Ukraine. Besides greater market access opportunities, transaction costs of engaging in trade and investment between the EU and Ukraine will decrease as a result of regulatory approximation. Interested stakeholders are recommended to conduct detailed impact analyses and compliance assessments in the specific sectors of their commercial activity.

Ukraine adopts new food legislation in order to align its legislation with that of the EU

On 15 September 2014, Ukraine's President Petro Poroshenko signed *Law No. 1602 VII on Amendments to Certain Legislative Acts of Ukraine related to Food Products* (hereinafter, Law No. 1602 VII), which had previously been adopted by the *Rada* (i.e., Ukraine's Parliament). Law No. 1602 VII intends to align Ukraine's food legislation with the food law of the EU. In particular, Law No. 1602 VII establishes a completely new wording for the *Law of Ukraine on the Safety and Quality of Food* (hereinafter, Law on Food Safety). In addition, Law No. 1602 VII amends certain provisions of the following Ukrainian legislation related to food: the *Law on State Regulation of Agricultural Imports*; the *Law on the State Biosafety System for Developing, Testing, Transportation and Use of Genetically Modified Organisms*; the *Code on Administrative Offences*; the *Commercial Code*; the *Law on Protection of Consumers' Rights*; the *Law on Sanitary and Epidemiological Welfare*; the *Law on the Withdrawal from Circulation, Processing, Disposal, Destruction, or Continued Use of Poor Quality and Unsafe Products*; the *Law on the List of Permits for Business Activity*; the *Decree of the Cabinet of Ministers of Ukraine on Standardisation and Certification*; and the *Law on Drinking Water and Water Supply*.

Adopting a new general food law appears to be relevant in the context of the recently signed EUAA. The first sentence of Article 474 of the EUAA (on gradual approximation) provides that, in line with the objectives of the EUAA, Ukraine will carry-out a gradual approximation of its legislation to EU law, as referred to in Annexes I to XLIV to the EUAA, based on commitments identified in Titles IV, V and VI of the EUAA, and according to the provisions of those Annexes. The general EU food law established in *Regulation (EC) No. 178/2002 of the*

European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (hereinafter, the EU General Food Law or GFL) is not explicitly listed in the various Annexes to the EUAA. However, the second sentence of Article 474 of the EUAA states that sentence 1 shall be without prejudice to any specific principles and obligations on regulatory approximation under Title IV (on Trade and Trade-related Matters) of the EUAA. Title IV refers in Chapter 3 to TBT measures, including “*marking and labelling*” and in Chapter 4 to SPS measures, including in legislation on GMOs. A general food law addressing SPS issues like food safety and TBT issues like the labelling of food falls arguably under Title IV of the EUAA, where a gradual approximation of Ukraine’s legislation to that of the EU is required under the EUAA.

In point no. 92 of Article 1, the Law on Food Safety defines ‘*food*’ as a substance or product (unprocessed, partially processed or processed) intended for human consumption. Food products include beverages (including drinking water), chewing gum and any other substance that are specifically incorporated into the food during manufacture, preparation or treatment. Point no. 92 further provides that the term ‘*food*’ does not include: feed; live animals, unless they are designed for placing on the market for human consumption; plants (before harvest); drugs; cosmetic products; tobacco and tobacco products; narcotic drugs and psychotropic substances within the definition of the UN Single Convention on Narcotic Drugs of 1961 and the UN Convention on Psychotropic Substances of 1971; and residues and contaminants. Thus, the scope of the definition of ‘*food*’ in Article 2 of the EU GFL is wider than the one in Ukraine’s Law on Food Safety, as it does not only cover substances or products ‘*intended for human consumption*’, but also those ‘*intended to be, or reasonably expected to be ingested by humans*’. A second difference is that the EU GFL’s definition of ‘*food*’ excludes in letter d) of Article 2 ‘*medicinal products*’ from its scope, while Ukraine’s ‘*food*’ definition does not.

In addition to more definitions in Article 1, the Law on Food Safety contains provisions on, *inter alia*: the safety of food; food business operators; traceability; risk analysis (defined as a process consisting of three interconnected components: risk assessment, risk management and risk communication); the system of hazard analysis and critical control points (HACCP, defined as a system that identifies, evaluates and controls hazards that are essential for food safety); food supplements (defined as food consumed in small quantities for addition to the usual diet, which is a concentrated source of nutrients, including protein, fat, carbohydrates, vitamins, minerals, and made in the form of tablets, capsules, pills, powders, liquids or other forms); and novel foods.

It appears that pre-market approval and/or registration is required under the Law on Food Safety only for novel foods, food supplements, flavours, enzymes, materials in contact with food, and natural mineral water. However, a more detailed examination would show whether permits and licensing procedures absent in the EU have been abolished in Ukraine.

Article 39 of the Law on Food Safety sets out some general requirements for the labelling of foods. In particular, food labelling must provide consumers with information that allows them to make informed choices. All foods that are in circulation in Ukraine must be labelled in the official language (operators may choose to place a product on the market in other languages next to the text in the official language). In comparison with the general rule in Article 16 of the EU GFL, which states that “*without prejudice to more specific provisions of food law, the labelling, advertising and presentation of food or feed, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, shall not mislead consumers*”, the Ukrainian text does not emphasise the main concept that labelling must not mislead.

On the other hand, Article 39 of the Law on Food Safety sets out some specific requirements on GM foods: if the content of GMOs in food exceeds 0.9% in any food ingredient containing, consisting of or produced from GMOs, food must be labelled as “GMO”. This provision roughly mirrors *Regulation (EC) No. 1831/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms*. However, it does not provide, *inter alia*, that the 0.9% threshold does only apply where these traces are adventitious or technically unavoidable. Interestingly, Article 39 of the Law on Food Safety establishes that market operators may optionally label their products as “GMO-free”. EU legislation does not establish requirements for, nor does it forbid the use of, “GM-free” labels to indicate that foodstuffs do not contain GM crops, or were produced without using GMOs. However, such labels are regulated in individual EU Member States.

With Law No. 1602 VII, including a completely new wording for Ukraine’s Law on Food Safety (which applies as of 20 September 2015), Ukraine’s food legislation is gradually approximating its legislative framework in this field to the one of the EU. There are some inconsistencies with EU law, such as the fact that medicinal products are not explicitly excluded from the definition of ‘food’, and it will take time until the full EU *acquis* in the field of food law is ‘transposed’ into Ukrainian law. The current situation appears similar to the one experienced in the past with Central and Eastern EU accession candidate countries, where the EU Commission analysed whether the requirements of EU food law were met. Food business operators present in Ukraine and those who want to access Ukraine’s market should monitor the development of new food legislation and seek expert advice when it comes to the approval and/or registration procedures for certain products or questions regarding the labelling of products.

Legislative improvements in food safety in Ukraine

Food safety is of the utmost importance for each and every State and individual. This serious issue has been prioritised by Ukraine as well and, on 15 September 2014, President Poroshenko signed the *Law of Ukraine No. 1602-VII on Amendments of Certain Legislative Acts of Ukraine related to Food Products* (hereinafter, Law No. 1602-VII). Law No. 1602-VII envisages a new version of the current *Law of Ukraine On Food Safety and Quality*, which, as of 20 September 2015, will be titled the *Law on the Basic Principles and Requirements for Safety and Food Quality* (hereinafter, Law on Food Safety), following substantial amendments. Several provisions of the Law on Food Safety will be enacted at a later stage (*i.e.*, in 2 to 5 years).

The Law on Food Safety aims at harmonising the legislation of Ukraine with that of the EU on food safety and quality of food products, ensuring a high level of public health protection and consumers’ interests, as well as maintaining transparent conditions for conducting business activities, raising competitiveness of domestic food products, and achieving price reductions.

The Law on Food Safety stipulates improvements in terminology, specifies types of offences and the adequateness of legal penalties, introduces a single competent authority on food safety, cancels certain approval procedures, and implements a number of EU approaches to GMO regulation, in particular the registration of GMO sources and not of the products thereof. The Law on Food Safety lays down and specifies the competences and obligations of state inspectors and the rules and detailed procedures for conducting state controls and clarifies the requirements of the documents to be issued upon an inspection.

The Law on Food Safety sets forth the definition of ‘*food business operator*’ as a business entity conducting either a profit-oriented or non-profit activity, which operates facilities primarily for processing and marketing food. Natural persons conducting similar activities as business entities fall within the scope of the ‘*food business operator*’ definition. Food business operators

have an obligation to develop, introduce and apply permanent procedures based on a system of hazard analysis and control in critical points. Food business operators must ensure adequate training of the staff responsible for food production. The Law on Food Safety applies to SPS measures; requirements on food quality (including consumers' awareness of it and criteria for advertising food); food business operators and the system of state control.

With regard to the advertising of food supplements, the Law on Food Safety prohibits using statements on potential health benefits or the relief of pain; references to the recognition, advice related to facilitation of medical condition; and statements or expressions that might cause negative physical feelings. Article 1.22 of the Law on Food Safety provides for a definition of operational permit as a permit issued by the competent authority to the food business operator based on the results of on-site inspection of its facilities. Article 23 further clarifies the conditions for obtaining operational permits as well as relevant exemptions. It should be noted that operational permits are issued to the facility (with detailed description of the production line) located at one address to a particular food business operator. The operational permit has an unlimited term of duration.

Food business operators conducting activities related to primary production, transportation, storage and/or sales of food that does not require conservation at a particular temperature regime, that can be stored at above 10°C and that is available for human consumption, do not require an operational permit. Such obligation does not apply to public catering, companies producing food of vegetable origin and retail stores with volumes of sales that do not exceed the thresholds set by the Cabinet of Ministers. Additionally, Law No. 1602-VII amends a number of legislative acts. In particular, sanitary, epidemiological and veterinary controls of agricultural products imported into Ukraine (*inter alia*, food intended for human consumption, products of animal origin, vegetables, cereal crops, oil seeds, oleaginous fruits, vegetable plaiting materials, animal or vegetable fats and animal feed) are abolished and only radiological and State control remain under the *Law on State Regulation of Agricultural Imports*.

The Law No. 1602-VII clarifies that the *Decree of the Cabinet of Ministers of Ukraine on Standardisation and Certification* no longer applies to food products. More importantly, this Decree envisaged veterinary certification of food of animal origin, which is now abolished. Interestingly, in order to include a product in the Unified Register of Certified Products, a company has to submit a compliance certificate and a certificate of compliance recognition, while under the previous procedure a compliance declaration issued by the producer on each supply of the food or supporting materials had to be submitted.

The requirements as to the packaging and State registration of the documents on drinking water were simplified by Law No. 1602-VII (modifying the *Law on Drinking Water and Water Supply*). In particular, requirements as to including the date of production, term of use and storage, name and address of the producer, and indication of the legislative act concerning the quality of water on the labelling, were excluded. Additionally, a provision on State registration of regulatory documents (*i.e.*, a regulation stipulating that producers had to provide manufacturing instructions with detailed descriptions of the production process, indicating the list of substances used in this production and a positive conclusion of the State Veterinary Service) was excluded.

Improving the system of food safety is one of the crucial prerequisites for EU market access. Notably, the precise regulation of the relations between competent authorities, food business operators and consumers, together with a clarification of imports of food products and their introduction to the market, will promote transparency and predictability. This, in turn, will facilitate and expand trade. Food operators and traders interested in setting-up compliance mechanisms to make full use of the new EU-Ukraine trade opportunities should make the necessary investments and seek expert advice.

Non-energy related trade restrictions imposed by Russia against Ukrainian food products

Bilateral relations between Russia and Ukraine, apart from other tensions, are marked by a number of non-tariff measures that significantly affect trade in goods between the two States. Import restrictions imposed by the Kremlin on Ukrainian food products may soon attract WTO scrutiny.

In January 2014, the Russian Federal Agricultural Agency (*Rosselkhoznadzor*) banned imports of pork from Ukraine due to results of an investigation that had revealed presence of African Swine Fever (ASF).

In June, Russia introduced a temporary ban on imports of potatoes from Ukraine claiming that golden nematode (*Globodera rostochiensis* (Woll) Behrens) had been periodically found in the product at issue.

In July 2014, Russia imposed a ban on the imports of all Ukrainian dairy products and milk. According to head of *Rosselkhoznadzor* Mr. Sergey Dunkvert, the measure automatically covered all milk- and cheese-containing food products.

The ground for this trade-restrictive measure is the alleged breach by Ukrainian exporters of technical regulations of the Customs Union (of Belarus, Kazakhstan and Russia) on labelling, milk fat content and mass content of fat in cheese, as well as the alleged microbial contamination in certain Ukrainian dairy products and milk.

Along the same lines, Russia imposed on 28 July 2014 an import ban on vegetable products from Ukraine, including those carried in hand luggage, passengers' luggage and parcel posts. Furthermore, canned vegetables, fruits and fish of certain Ukrainian producers are subject to the same restriction starting from 29 July 2014. The Russian Federal Service for Supervision of Consumer Protection and Welfare Rights (*Rospotrebnadzor*) adopted similar decisions asserting that the products at issue failed to comply with labelling requirements, as well as with the mandatory information on energy density, content of protein, carbon, iron and other elements to be indicated on packages.

In addition, Russia invoked the violation of labelling requirements as legal ground for the imposition of an import ban on juice as well as on alcoholic spirits, beer and beer-based beverages of certain Ukrainian producers. The relevant decisions were adopted in late July and mid-August 2014, respectively. Finally, in September 2014 Russia imposed a complete import ban on Ukrainian confectionery products after having imposed certain preliminary restrictions in 2013 on the products of certain Ukrainian companies, including the one owned by Mr. Petro Poroshenko, the current President of Ukraine.

Reportedly, the Ukrainian Government is considering adopting retaliatory measures against Russia encompassing 39 commodity groups, predominantly food products, cosmetics and pharmaceuticals. However, this reaction is likely to bring about a violation by Ukraine of its WTO commitments. In addition, it is not economically and commercially rational since the share of Ukraine in Russia's imports accounts for a mere 5%. Therefore, a more preferable and rule-based scenario would be to challenge Russia's measures within the WTO dispute settlement system.

In general, inasmuch as Russia's import bans may be purely '*punitive*' in nature and may not be justifiable on the basis of scientific and health reasons, they appear to breach Article XI of the General Agreement on Tariffs and Trade, which sets forth the general elimination of any

quantitative restrictions on importation or exportation or sale for exports of any product of one contracting party to the territory of other contracting parties. However, Russia insists on concerns over quality and consumer safety of Ukrainian products. Therefore, the measures at issue should be considered within the context Russia's commitments under the WTO TBT and SPS Agreements.

With regard to the SPS Agreement, Russia's trade-restrictive measures fall within the scope of paragraphs (b) and (c) of Annex A to the SPS Agreement, as applied to protect human life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in food as well as from risks arising from diseases carried by animals or products thereof, or from the entry, establishment or spread of pests. Article 2 of the SPS Agreement lays down three criteria for SPS measures to be compatible with WTO commitments, *i.e.*: (i) to be necessary for the achievement of the purported objective (*i.e.*, to protect human life and health in the present case); (ii) to be based on scientific principles; and (iii) not to be maintained without sufficient scientific evidence. Article 5 contains specific provisions on risk assessment and risk management. Russia bears a burden of proof in order to demonstrate that its risk assessment was duly conducted by the federal inspection authorities in every single case of import restrictions affecting products of Ukraine. Article 5.2 requires scientific evidence, relevant processes and production methods, relevant inspection, sampling and testing methods, to be taken into account in the process of risk assessment. Under Article 5.6, Russia has to prove that the measures at issue are not more trade-restrictive than necessary, in other words that there is no other alternative less-trade restrictive measure reasonably available. Russia's import restrictions against Ukrainian products may be deemed to be improperly substantiated, notably with regard to the necessity and sufficiency of the scientific evidence, which are obligatory conditions for any SPS measure.

The measures at issue may also involve disciplines under the TBT Agreement, in particular the alleged violation by Ukrainian producers of certain technical regulations of the Customs Union (of Belarus, Kazakhstan and Russia). According to Article 2.2 of the TBT Agreement, the measures at issue are to be subject to legal analysis in order to determine whether, on one hand, they create unnecessary obstacles to international trade, including the necessity and trade-restrictiveness consideration, and, on the other hand, whether the risk assessment is based on scientific and technical information.

Should the current political and commercial escalation between Russia and Ukraine not deflate, the WTO may soon be called to regulate several disputes. The two countries should exercise due restraint and avoid endless '*tit-for-tat*' measures, which will inevitably hurt both domestic and foreign interests in a zero-gain confrontation. However, as responsible WTO Members, both countries are entitled to seek WTO dispute settlement and should prefer that route to further unilateral actions. Business operators affected by current measures should work with their respective governments to find mutually acceptable solutions and should very much encourage their authorities to do so within the neutral, structured and rule-based context of the WTO.

Recently Adopted EU Legislation

Market Access

- *Commission Delegated Regulation (EU) No. 1015/2014 of 22 July 2014 amending Annexes II and III to Regulation (EU) No. 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences, and repealing Commission Delegated Regulation (EU) No. 154/2013*

Trade Remedies

- *Commission Implementing Regulation (EU) No. 999/2014 of 23 September 2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No. 1225/2009*

Food and Agricultural Law

- *Commission Implementing Decision of 29 September 2014 on measures to prevent the introduction into the Union of the foot-and-mouth disease virus from Algeria, Libya, Morocco and Tunisia (notified under document C(2014) 6868)*
- *Commission Implementing Regulation (EU) No. 1021/2014 of 26 September 2014 amending Annex I to Regulation (EC) No. 669/2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin*

Other

- *Council Decision of 23 June 2014 on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, as regards Title III (with the exception of the provisions relating to the treatment of third-country nationals legally employed as workers in the territory of the other Party) and Titles IV, V, VI and VII thereof, as well as the related Annexes and Protocols*
- *Council Decision of 23 June 2014 on the signing, on behalf of the European Union, of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, as regards the provisions relating to the treatment of third-country nationals legally employed as workers in the territory of the other party*

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FratiniVergano specializes in European and international law, notably WTO and EU trade law, EU agricultural and food law, EU competition and internal market law, EU regulation and public affairs. For more information, please contact us at:

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