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The US initiates a WTO dispute with Canada concerning the retail sale of wine

On 18 January 2017, the US filed a request for WTO consultations with Canada concerning measures adopted by the Canadian province of British Columbia (hereinafter, BC) and governing the sale of wine in grocery stores. The measures restrict access to grocery store shelves to 100% BC-produced wine, while imported wine can only be sold in, what the measures refer to as, a '*store within a store*' (*i.e.*, a wine store that is located within a grocery store, but that is physically separate). The US claims that these retail sale requirements constitute less favourable treatment of imported *vis-à-vis* domestically produced wine and are, therefore, inconsistent with Article III:4 of the General Agreement on Tariffs and Trade 1994.

Since the end of Prohibition in the 1920's, trade in alcohol in Canada has been tightly regulated by the provinces. In particular, the distribution of alcohol is under the control of liquor control boards (hereinafter, LCBs), which in essence are provincial marketing agencies that act as the Government's middlemen between the producers and the consumers of alcoholic beverages. Regulation covers all aspects of the alcohol market, from production minimums to retail mark-ups and warehouse fees. The LCBs previously maintained (and in some provinces, still do, to date) a monopoly over the sale of beers and liquors (including wine) in retail outlets, hotels, bars and restaurants. In some provinces, LCB stores remain the only stores licensed to sell alcohol. Although liberalisation has been gaining momentum, Alberta remains the only province where all liquor stores are private. Other provinces are taking incremental steps in the same direction: Saskatchewan, for instance, has privatised half of its government stores and has permitted the opening of new private outlets.

Trade in alcoholic beverages between provinces is also severely restricted, with limits established on the volume of beverages that can be imported for personal consumption. These limits, however, have recently been challenged in court as unconstitutional by a resident of New Brunswick, who was issued a fine for bringing, from neighbouring Quebec, more alcohol than is allowed under New Brunswick's Liquor Control Act regulations. The first instance court found the restriction unconstitutional, while the New Brunswick Court of Appeal refused to hear the province's appeal. The prosecutor's application for a leave to appeal is currently pending before the Supreme Court of Canada. Notably, the interprovincial free trade agreement that was negotiated between provincial and territorial leaders in 2016, and which is expected to be ratified in 2017, still excludes alcohol from its scope.

Canada's highly heterogeneous regulation of the alcohol market has already drawn complaints from many of its trading partners. A separate issue considered in those disputes was the responsibility of the Federal Government in Canada for the acts of its provincial authorities. In the mid-1980's, the European Communities (*i.e.*, the EU) contested various measures under the General Agreement on Tariffs and Trade 1947 (hereinafter, GATT), including provincial LCBs' differential mark-ups on imported and domestic alcoholic beverages, origin-based discrimination in listing requirements (*i.e.*, requirements to be met by an alcohol supplier to obtain LCB's permission to sell its product), and the unavailability of certain retail points of sale to imported alcoholic beverages. The GATT panel found violations of Articles II:4 (disciplines on importation monopolies) and XI:1 (general elimination of quantitative restrictions) of the GATT, while it exercised judicial economy with respect to claims under Article III:4 of the GATT. Since the measures at issue were adopted by regional authorities and not the Federal Government of Canada, the complainant also invoked Article XXIV:12 of the GATT, which requires each WTO Member to take "*such reasonable measures as may be available to it to ensure observance of the provisions of the GATT by the regional and local governments and authorities within its territories*". The panel concluded that it was for Canada to demonstrate, which it had failed to do, that it had taken all such reasonable measures available to it.

Article XXIV:12 of the GATT featured prominently again in a 1992 dispute, in which the US challenged LCBs' same or similar practices with respect to beer, which, the US claimed, had not been brought into conformity with the GATT in accordance with the 1988 panel report. Having found inconsistencies with the GATT, the panel, composed of the same members as in the 1988 dispute, proceeded to consider the US' claim under Article XXIV:12 of the GATT. This time, the panel made an attempt at establishing a legal standard – *"serious, persistent and convincing effort"* – against which measures taken by a central government, to secure compliance by regional authorities with the GATT, should be judged. It also noted that the provisions of the GATT directly applied to measures adopted by regional and local governments and authorities because a central government may be required to ensure the observance of provisions by subnational governments and authorities only if such provisions actually apply to such governments and authorities.

With the establishment of the WTO and the adoption of the Dispute Settlement Understanding (hereinafter, DSU), Article XXIV:12 of the GATT has arguably lost much of its importance. Article 22.9 of the DSU explicitly allows WTO Members to invoke the dispute settlement provisions of WTO Agreements in respect of measures taken by regional or local governments or authorities within the territory of a Member. It further clarifies that the provisions on compensation and retaliation (*i.e.*, suspension of concessions) equally apply where reasonable measures taken by a WTO Member have failed to secure the observance of the applicable WTO Agreements by relevant regional or local bodies. Furthermore, under general international law, States in any case bear responsibility for the actions of their constitutive entities. The compliance panel in *Australia – Measures Affecting Importation of Salmon* held that a measure adopted by Tasmania, a state of the Commonwealth of Australia, "*is to be regarded a measure taken by Australia, in the sense that it is a measure for which Australia, under both general international law and relevant WTO provisions, is responsible*". The panel found support for this in Article 27 of the Vienna Convention of the Law of Treaties and in what is now Article 4 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts. A recent panel report in *United States – Conditional Tax Incentives for Large Civil Aircraft* dealt with claims against tax measures maintained by the US' State of Washington. The issue of attribution of the acts of the State of Washington to the US was not even discussed, and, having found violations of the Subsidies Agreement, the panel recommended the United States to withdraw the prohibited subsidy.

The measures at issue in the US' current request for consultations resulted from a review of British Columbia's liquor policy, which took place in the autumn of 2013 and collected opinions and proposals for reform from local governments, the industry, and consumers. It

may be worth noting that, in the BC Liquor Policy Review Report (hereinafter, the Report) that he drafted, John Yup, Parliamentary Secretary to the Attorney General and Minister of Justice for Liquor Policy Reform, admitted that BC had retained "*a regulatory regime that ha[d] become outdated, overly complex and excessive*" with "*outdated regulations hav[ing] [turned into] consumer irritants instead of effective deterrents*", for which reason the review "*generated more participation than any other engagement ever run by government*".

The prohibition on the sale of liquors, including wine, in urban grocery stores became the central issue of public comments during said review, with 75% of respondents speaking in favour of lifting the prohibition (BC rural grocery stores were already allowed to sell alcohol). The Report thus recommended permitting the sale of liquor in grocery stores subject to separating grocery products from liquor (to ensure safety and restrict minors' access to liquor) and maintaining the restriction on the total number of liquor-selling retail outlets. In addition, the Report explicitly stated that the new grocery model should highlight BC products and support BC manufacturers. On 1 April 2015, this recommendation was implemented in the form that the US is currently challenging.

To show a violation of Article III:4 of the GATT, the US has to demonstrate that the separation requirements modify the conditions of competition to the detriment of imported wine. Important parallels may be drawn in this regard with one of the central disputes in the relevant WTO '*case law*', *i.e.*, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef* (hereinafter, *Korea – Beef*). In that instance, the US and Australia contested Korea's '*dual retail system*', which essentially required large retailers to sell imported beef separately from domestic beef, while small retailers were allowed to sell only one or the other, but not both. In that dispute, the Appellate Body noted, in relevant part, that formal separation does not *per se* mean that imported beef was treated less favourably than domestic beef, because it did not necessarily change the conditions of competition to the disadvantage of imported beef. It furthermore refused to agree with the panel that, by *"limit[ing] the possibility for consumers to [visually] compare imported and domestic products"* and by *"encourag[ing] the perception that imported and domestic beef are different"*, the dual retail system necessarily created a competitive advantage for domestic beef.

What, in the view of the Appellate Body, made the measure inconsistent with Article III:4 was the cutting-off of imported beef from a large part of the retail channel, which resulted from a lion's share of small retailers having decided, as a consequence of the adoption of the measure, to sell domestic meat only. The BC regulations now disputed by the US do not explicitly require grocery retailers to choose between imported and domestic wine, but impose an extra burden on grocery stores, which sell imported wine, in addition to BC-produced wine (through the requirement to set up a store-within-the-store). Moreover, they prohibit the sale of imported wine off the grocery store shelf. It may be expected that the US will seek to show that this separation has an adverse effect on the competitive opportunities of imported wine, similar to that found by the Appellate Body in *Korea – Beef*.

It is to be expected that the Office of the US Trade Representative under the new-elected US President Trump, who has declared his commitment to promoting American exports, will pursue this dispute brought in the last days of the Obama Administration. By going through all the stages of the dispute settlement process, Canada may postpone consequences of an unfavourable decision by a considerable amount of time. Eventually, however, this case is poised to support the liberalisation trend observed within Canada and may become yet another nudge to reduce some of the barriers in the BC market, as well as in the Canadian alcohol market at large. Operators and wine producing countries should follow the case closely and participate, as actively and as far as possible under WTO dispute settlement rules and procedures.

The US files a WTO complaint concerning China's administration of tariff rate quotas for certain agricultural products

On 19 January 2017, a spokesperson for China's Ministry of Commerce stated that he believed that China and the US could resolve any disputes through dialogue and negotiation. The statement was made in reaction to a comment by incoming US Secretary of Commerce Wilbur Ross, who strongly criticised China's trade practices and stated, at his Senate confirmation hearing, that he would seek new ways of combating them. This would continue and possibly escalate the steps taken by the previous US Administration in the last eight years. On 15 December 2016, the US requested WTO consultations concerning China's tariff rate quotas (hereinafter, TRQs) for certain agricultural products, including those maintained *vis-à-vis* corn, rice and wheat imports.

This complaint, *China - Tariff Rate Quotas for Certain Agricultural Products*, is one of the most recent examples of a string of WTO disputes that the US has launched against China in the past years. During the course of the last eight years, fourteen disputes have been brought to the WTO and a further complaint, related to primary aluminium, was filed in January 2017. On 13 September 2016, the US had already filed a closely related complaint in the field of agriculture, opening the consultation period. In the *China - Domestic Support for Agricultural Producers* dispute, the US requested the establishment of a dispute settlement panel on 5 December 2016. That complaint concerns the same agricultural products, namely corn, certain types of rice and wheat. The US Trade Representative (hereinafter, USTR) noted that the Chinese domestic support measures and the administration of the TRQ regime "*worked together to distort global markets for wheat, corn and rice*". The results anticipated by the US are a reduction of the domestic support and an improved and more transparent administration of the TRQs. The USTR estimates that an improved administration of the TRQs could have led to China importing as much as USD 3.5 billion worth of additional crops in 2015 alone. The US alleges that China's administration of the relevant TRQs is "*non-transparent*", "*opaque*" and "*unpredictable*". Essentially, TRQs are tariff-based trade policy tools aimed at protecting domestically-produced goods from competitive imports. TRQs actually link two policy instruments that were historically used to restrict imports: quotas and tariffs. In a TRQ, the quota works together with two separate tariff levels (the in-quota tariff and the over-quota tariff) to provide the desired degree of import protection. Imports entering within the TRQ are usually subject to a lower or zero tariff rate. Imports above the quota's quantitative threshold face a much higher, often prohibitive, tariff.

Schedule CLII, Part I, Section I-B on Tariff Quotas included in the Protocol of Accession of the People's Republic of China (hereinafter, the Accession Protocol) provides detailed information on China's TRQs and their administration. It includes the specific amounts of the quota (*e.g.*, 9.636 million metric tonnes of wheat, 2.66 million metric tonnes of long-grain, as well as of short- and medium-grain rice, and 7.2 million metric tonnes of corn), the in-quota tariff rate (1% for most tariff lines), the staging of the amount, and the share of the tariff-quota reserved for importation through state-trading enterprises (50% for rice, 60% for corn and 90% for wheat). Of key importance in this dispute is the controversy about the reallocation of unused amounts of the TRQs. The US notes that, while China does announce on an annual basis the opening of unused TRQs, the further process remains unclear. The Accession Protocol provides for an annual reallocation process for unused TRQs. Any quota not used by 15 September can be reallocated. For that reason, the Accession Protocol states that, if a quota-holder has not used the total quantity by 15 September, it must return the unused portion of the tariff-quota quantity for reallocation to the competent Chinese authorities. Applications for reallocation are to be accepted by the competent Chinese authorities from 1 September to 15 September every year and new allocations must then be assigned by 1 October. Furthermore, the Accession Protocol prescribes that specific conditions concerning the reallocation of the TRQs would be published in China's Official Journal one month in advance of each application period. All these requirements are typically intended to ensure

the functioning of the TRQs and the steady and predictable supply of the market. Current practices, however, indicate a malfunctioning of this process. For example, reports indicate that, while the management of the TRQs of private entities for wheat, which only account for 10% of the share, appear to work well, the same does not apply to the 90% initially reserved for state trading entities.

Despite the foreseen reallocation mechanism and despite the fact that global prices would actually favour the importation of those products into China, most of the TRQs are not reallocated at all. For example, Chinese wheat prices, which closely correspond to China's support prices, consistently surpass international wheat prices. However, Chinese customs data, compiled and published by the USTR, appears to show that, in 2014 and 2015, only about 30% of the TRQ for wheat was utilised. A similar rate is achieved for short- and medium-grain rice. The rate for corn is slightly higher at 65% in 2015 (up from 36% in 2014). Only imports of long-grain rice achieved nearly full utilisation of the TRQ at 92% in 2015, considerably up from 59% in 2014. An indicator of the management issues existing with respect to the TRQ is that, reportedly, China also imported some wheat outside of the TRQ, which should be unnecessary considering the unused amount under the TRQ. Further details of the management by the competent Chinese authorities remain unavailable. In particular, the actual allocation process for the TRQ share reserved to the state trading entities is not public, but is, reportedly, rather considered an internal, policy-driven issue.

The US asserts that these practices suggest that the administration by China of the TRQs is inconsistent with China's obligations under the Accession Protocol, as well as with a number of provisions of the General Agreement on Tariffs and Trade (hereinafter, GATT). More specifically, paragraph 116 of the Working Party Report, which is deemed to be an integral part of the Accession Protocol (Paragraph 1.2 of Part I of the Accession Protocol, paragraph 342 of the Working Party Report) provides that "*China would ensure that TRQs were administered on a transparent, predictable, uniform, fair and non-discriminatory basis using clearly specified timeframes, administrative procedures and requirements that would provide effective import opportunities; that would reflect consumer preferences and end-user demand; and that would not inhibit the filling of each TRQ*". Furthermore, the US asserts that China violated its obligation under Article X:3(a) of the GATT by failing to administer the TRQs in a reasonable manner, under Article XI:1 of the GATT by instituting or maintaining prohibitions or restrictions on its importation of the products at stake other than through duties, taxes or charges and, finally, under Article XIII:3(b) of the GATT by failing to provide public notice of the quantities permitted to be imported under each TRQ and of the changes to such quantities.

The issues of the TRQ administration and of the domestic support for agricultural producers have to be seen in connection with China's stated efforts aimed at achieving food self-sufficiency and food security. Indeed, both mechanisms are part of a larger scheme by China supporting and protecting the production of certain agricultural products. One aspect of the market measures relate to China's domestic price support policies, subsidies that are paid to Chinese farmers. These subsidies have led to considerably higher prices of domestically produced grains as compared to the world market. The strategy worked in so far as, for example, wheat production increased by almost 40% between 2006 and 2016. However, it has also led to an oversupply of corn and domestic support for corn was therefore abolished in March 2016. In order to protect domestic production, China also appears to limit the imported amounts through the management of its TRQs. A further aspect, and sign of the deep involvement of the Chinese Government in agricultural planning, are the detailed plans on the size of crop areas for the 2016-2017 agricultural year, announced in 2016 by the Chinese Government. Those plans note a decrease of the area for certain crops (*e.g.*, corn), an increase of the area for others (*e.g.*, soy), while the area for further crops would remain at previous levels (*e.g.*, rice and wheat).

While the allegations, if found to be correct, would indeed indicate non-compliance with WTO rules, it remains to be seen if this approach will deliver the intended results. In particular,

China can be expected to strongly defend its position in the name of food security and food self-sufficiency and will reiterate its position that the administration of the TRQs was in line with its WTO commitments. Reports already suggest that China intends to '*retaliate*' against other important US products due to the growing number of US complaints. An overarching objective could be to get China back to the negotiation table, creating an opportunity for negotiations of a wider range of contentious issues. The next steps will now be decided by the new US Administration, which starts operating following an electoral campaign marred by loud calls for punitive tariffs against Chinese imports into the US. The high number of ongoing dispute settlement proceedings between the US and China suggests, however, that a more responsible and rules-based approach at tackling these issues is still unfolding.

TRQs and their transparent application are an important trade policy tool, allowing countries to open their markets in a controlled manner. However, as the current dispute between the US and China shows, and the recent issue with the EU's TRQ for High Quality Beef (see *TradePerspectives*, Issue No. 1 of 13 January 2017) suggests, traders must be vigilant as to the application of TRQ regimes and should highlight issues with existing TRQs to their representative governments. Businesses and countries must consider TRQs with respect to the regulation of imports, particularly in relation to sensitive products, but they should always seek expert advice to ensure proper TRQ definition, implementation and the avoidance of lengthy and costly dispute settlement proceedings. With respect to the Chinese TRQs for certain agricultural products, the request for consultations filed by the US has now formally initiated the dispute at the WTO. Consultations are intended to provide the parties to the dispute with an opportunity to discuss the issues at stake and to find a satisfactory solution without proceeding further with litigation. Under WTO dispute settlement procedures, if consultations have failed to resolve the dispute after 60 days, the complainant may request adjudication by a panel. This may then be followed by an appeal to the WTO Appellate Body and, potentially, by compliance proceedings in case of non-compliance by the WTO Member that was found to be in breach of its obligations. At this point, about half of the time period granted for consultations has already lapsed. Interested parties (*i.e.*, countries and business constituencies alike) should closely monitor these proceedings and may want to consider joining the consultations and the potential subsequent proceedings, as appropriate.

Naming and marketing of plant-based meat substitutes – vegetarian '*Schnitzel*' and vegan sausages?

Recently, calls have been made to restrict the naming and marketing of plant-based meat substitutes. In a press interview, focussing on vegetarian *Currywurst*, a typical German *Bratwurst* (*i.e.*, sausage) sliced and covered in curry sauce, and vegan *Schnitzel*, Christian Schmidt, Germany's Minister of Agriculture, stated that the use of meat names for plant-based alternatives is "*completely misleading and confusing consumers*". No one may "*pretend that such pseudo-meat dishes are meat*", Schmidt argued. However, in view of the existing legal framework, the European Commission (hereinafter, Commission) does not appear to consider it necessary to act.

The topic of potentially misleading names of certain vegetarian and vegan foods was also recently the subject of two Parliamentary questions for written answer by the Commission. On 4 May 2016, Renate Sommer, a German Member of the European Parliament (hereinafter, MEP), argued that, while the market for vegetarian and vegan food continued to grow, more and more of such food was offered as imitations of meat products, which had the same appearance as meat products and which were also labelled as the same meat product. For example, '*vegetarian ham*', '*vegetarian meat sausage*', '*vegetarian schnitzel*' and '*vegan chicken*' appear on the market. In addition to this, according to MEP Sommer, many of these products are depicted on the product packaging or sold in transparent packaging to create the impression of meat products. On 28 October 2016, Italian MEPs Paolo De Castro and Giovanni La Via claimed that numerous vegetable-based foodstuffs derived their sales from

names, which relate to meat or dairy products, contravening the rules relating to product labelling and marketing. The Italian MEPs added that, particularly in the case of meat products, even when the rules were not violated, products intended for vegans and vegetarians were promoted using names that clearly referred to meat products. Examples include '*vegan bresaola*', '*vegetarian prosciutto*', and '*vegan mortadella*'. The three MEPs basically asked whether the Commission intended to intervene and regulate this particular sector by introducing legislation to safeguard certain names relating to meat products, as is the case for dairy products. The Commission, in its reply to the MEPs, refers to the applicable legal framework which, in its view, provides sufficient legal basis to protect consumers from being misled.

Article 17 of Regulation (EU) No. 1169/2011 on the provision of food information to consumers (hereinafter, FIR) requires the name of the food to be its legal name (as in coffee, jam, honey). In the absence of such a name, the name of the food must be its customary name, or, if there is no customary name or the customary name is not used, a descriptive name of the food must be provided. According to the guidance to the FIR published by the UK's Department for Environment, Food and Rural Affairs (Defra), "*[a] '*customary name*' is a name which, over time, has come to be accepted by consumers as the name of the food without it needing further explanation. Some examples are '*fish fingers*' and '*Bakewell tart*'. Some names of foreign origin, such as '*muesli*' and '*spaghetti*' have also become customary names. A name which is customary in a particular area (e.g. an '*Essex Huffer*') might not be understood on its own if it is used as the name for the same food when it is sold outside that area. Consideration will therefore need to be given as to whether or not further information describing the food needs to be provided as part of the name of the food. A descriptive name must not be misleading*".

For meat products, with a few exceptions, there are no legal names. A *Schnitzel* or a *Wurst* are customary names in Germany and Austria, and may be understood by non-German speakers. But do these terms stand only for meat? According to the *Duden* (a dictionary and the predominant language resource of the German language), '*Schnitzel*' comes from the middle-high German '*Sniz*', which means '*cut*'. A Schnitzel is generally a "*cut off, torn little bit of something*". Vegetarian cutlets, however, are not cut off, but are pressed from, *e.g.*, soybean. Therefore, the term *Schnitzel* appears to imply that it is a meat product. A similar reasoning may apply to the names *prosciutto* and *bresaola*. For the term *Wurst* (*i.e.*, sausage), the situation is clearer. According to the *Duden*, *Wurst* is indeed a "*food of crushed meat and spices, which is filled in casings*", but also, in general, "*something that looks like a sausage, has the form of an elongated roll*". From the wording, *Wurst* (or sausage) could be used for meat replacement products in the form of an elongated roll. However, whether a product name may be misleading must be established on a case-by-case basis, taking into consideration all elements, including labelling, advertising and packaging. If animals are depicted on a plant-based (*i.e.*, vegetarian) sausage's product label, or if such product is sold in transparent packaging in order to create the impression of meat products, there may be misleading elements at play.

Where the average consumer expects that a particular food is normally produced with certain ingredients or that certain ingredients are naturally present in the food, the application of Article 7(1)(d) of the FIR would be triggered. This provision states that food information must not be misleading as to the characteristics of the food and, in particular, as to its nature, identity, properties and composition or by suggesting, by means of the appearance, the description or pictorial representations, the presence of a certain ingredient or food, when, in reality, a component being naturally present, or an ingredient normally used in that food, has been substituted with a different component or a different ingredient. In addition, under Annex VI, part A, point 4 of the FIR, where a substitution ingredient is used in a product, the name of the product should be followed in close proximity by the name of the substitution ingredient(s). Arguably, a product denominated '*Schnitzel*' containing plant-base ingredients instead of meat could be a '*substitution*' product, which may mislead consumers.

The new document with the *Questions and Answers on the application of the Regulation (EU) No 1169/2011 on the provision of food information to consumers (Part II)*, published by the Commission on 13 December 2016, gives the following examples for such '*substitution foods*': (1) a food in which an ingredient normally used in that food has been substituted with a different component or a different ingredient (*e.g.*, a pizza for which the presence of cheese is expected, while cheese has been substituted with another product), named otherwise, made from raw materials used for the purpose of replacing, in whole or in part, any milk constituent; and (2) a food in which a component naturally present in that food has been substituted with a different component or a different ingredient (*e.g.*, a product that looks like cheese, where fat of milk origin has been replaced by fat of vegetable origin).

As regards the labelling of foods where a substitution ingredient is used in a product, the name of the product must be followed in close proximity by the name of the substitution ingredient, printed on the package or on the label in such a way as to ensure clear legibility and using a font size that has an x-height of a least 75% of the x-height of the name of the product and which is not smaller than 1,2 mm. It is up to the food business operator to find an appropriate name for this '*substitution food*', in accordance with the rules concerning the name of the food. In addition, the provisions of the product-specific legislation in place, where appropriate, shall also be respected. For example, it is forbidden to use the name '*imitation cheese*', because the name '*cheese*' is reserved exclusively for milk products (other examples are kefir or yoghurt) by Annex VII, Part 3 of *Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products* (hereinafter, Regulation (EU) No. 1308/2013). '*Milk*' means exclusively the normal mammary secretion obtained from milking.

Part 1 of Annex VII contains only general sales descriptions, in all official languages of the EU, for meat of bovine animals (like '*veal*' in English), but currently no different language versions of meat products like sausage, *prosciutto* or *Schnitzel*. Such a list of reserved terms for meat products in the EU's different languages could be drafted in an amendment to Regulation (EU) No. 1308/2013 and the use of terms like *prosciutto* or *Schnitzel* could be banned for products that are not meat-based. However, there are no signs that the Commission appears poised to introduce such reserved terms for meat products.

In the cases of plant-based *Schnitzel, prosciutto or bresaola*, there are certain parallelisms to the so-called '*imitation foods*', such as the so-called '*Analogue Cheese*', which must be made clear in the labelling (this also applies to the display of foods). These plant-based products may no longer be denominated as cheese. However, there is an important difference: in shops, '*Analogue Cheese*' was not named, for example, as '*vegan cheese*', but simply as '*cheese*'. Perhaps nobody would have complained if it had been named '*plant-based cheese without milk*'. *Schnitzel* without meat is, however, usually denominated '*vegetarian Schnitzel*'. Traditional meat terms, such as *prosciutto*, are used to guide consumers to the products they want. Vegetarian alternatives are developed and produced in order to match the '*original*' as closely as possible in terms of shape, texture, taste, how to prepare it, etc., which is why traditional terms are useful. The vegetarian '*character*' of the product is in most cases unmistakably clear, commonly by using words such as '*vegetarian*' or '*vegan*' in the product's name. In addition, the plant ingredient is normally indicated in close proximity to the product name. It is up to the food business operator to find an appropriate name for this '*substitution food*' in accordance with the rules concerning the name of the food.

The topic of plant-based meat substitutes is closely related to the matter of defining vegetarian and vegan food. The FIR expressly gives the Commission the power to adopt an implementing act on how to provide information on the suitability of foods to vegetarians or vegans, which is typically given on a voluntary basis, so as to ensure that this information is not misleading, ambiguous or confusing for the consumer. The FIR does not provide for a date by which the Commission must adopt such implementing act and the Commission has not yet done so. In response to the inaction by the Commission, there have been efforts at the EU Member States' level. In Germany, the Consumer Protection Ministers and Senators

of the 16 German Federal States recently adopted a decision on binding definitions of the terms '*vegan*' and '*vegetarian*' (see *Trade Perspectives*, Issue No. 13 of 1 July 2016).

It appears that the applicable provisions provide sufficient legal basis to protect consumers from being misled by plant-based meat alternatives, if those are also denominated '*vegan*' or '*vegetarian*'. EU Member States have the primary responsibility to enforce, monitor and verify that the relevant requirements of food law are fulfilled by food business operators at all stages of production, processing and distribution. However, for the sake of clarity, the terms '*vegan*' and '*vegetarian*' should be defined at the EU level. The next steps taken in the EU and its Member States on the labelling of products as suitable for vegans and vegetarians (in particular, an eventual legislative proposal put forward by the Commission) should be monitored and stakeholders should be prepared to participate in shaping upcoming EU legislation by interacting with relevant EU Institutions, trade associations and other affected stakeholders. Establishing a list of reserved terms for meat products in the EU's different languages like *prosciutto* or *Schnitzel* for meat products would require amending Regulation (EU) No. 1308/2013, which appears challenging. Where warranted, operators should also consider triggering domestic administrative procedures against anti-competitive, deceptive or misleading advertisements before competent national authorities, or even challenging these practices before judicial authorities.

Recently Adopted EU Legislation

Market Access

- *Commission Implementing Regulation (EU) 2017/120 of 24 January 2017 on the derogations from the rules of origin laid down in Annex II to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part, that apply within quotas for certain products from Ecuador*

Trade Remedies

- *Commission Implementing Regulation (EU) 2017/141 of 26 January 2017 imposing definitive anti-dumping duties on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan*

- *Commission Implementing Regulation (EU) 2017/109 of 23 January 2017 imposing a definitive anti-dumping duty on imports of certain aluminium road wheels originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*

Customs Law

- *Commission Implementing Regulation (EU) 2017/144 of 26 January 2017 on the issue of licences for importing rice under the tariff quotas opened for the January 2017 subperiod by Implementing Regulation (EU) No 1273/2011*

- *Commission Implementing Regulation (EU) 2017/95 of 19 January 2017 fixing the allocation coefficient to be applied to the quantities on which applications for import licences and applications for import rights lodged from 1 to 7 January 2017 are based under the tariff quotas opened by Regulation (EC) No 616/2007 for poultrymeat*

Food and Agricultural Law

- *Commission Implementing Regulation (EU) 2017/139 of 25 January 2017 amending Regulation (EC) No 1484/95 as regards fixing representative prices in the poultrymeat and egg sectors and for egg albumin*

Other

- *Decision No 1/2016 of the EPA Committee set up by the interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part, of 15 December 2016 regarding the adoption of the Rules of Procedure of the EPA Committee [2017/108]*

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