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## The WTO Appellate Body issues its Report in *Russia – Pigs (EU)*, in part, adding to the discourse of '*regionalisation*'

On 23 February 2017, the WTO Appellate Body issued its report in *Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union* (*i.e.*, *Russia – Pigs (EU)*). The WTO Appellate Body, in large part upholding the Report of the Panel in the dispute, concluded that Russia's prohibition of imports of live pigs, pork and other pig products from the EU violated Russia's WTO obligations, in particular those under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter, the SPS Agreement).

The EU initiated the dispute on 8 April 2014, when it requested WTO consultations with Russia concerning a prohibition on live pigs, pork and other pig products from all EU Member States implemented by Russia following reported cases of African Swine Fever (hereinafter, ASF) in only Estonia, Latvia, Lithuania and Poland. The EU and the four relevant EU Member States implemented measures to contain the spread of ASF, but Russia maintained its prohibition and chose not to apply the concept of '*regionalisation*' (*i.e.*, excluding imports only from affected areas and allowing imports from all non-affected areas or processing facilities). The EU challenged Russia's measures under the WTO SPS Agreement, citing, *inter alia*, Article 3 of the SPS Agreement on harmonisation of SPS measures with international standards, Article 6 of the SPS Agreement on regionalisation, Article 5 on the use of scientific evidence when applying SPS measures, and Articles 2.3 and 5.5 on discriminatory treatment.

Russia countered that its measures were consistent with international standards, that it did not discriminate against the EU in comparison to other WTO Members, and that its decisions not to allow imports from regions that the EU considered to be non-affected were done on the basis of objective evidence. In part, Russia argued that it could not accept veterinary health certificates issued by the EU, because the EU had not been free of ASF for three years, which was a condition of a bilateral mutual recognition agreement between the two parties. The Panel disagreed with Russia, concluding that the measures were more trade-restrictive than what was needed to fulfil Russia's goal of preventing the spread of the ASF. The Panel also concluded that, following evidence submitted by the EU regarding Russia's continued importation of '*like*' products from Ukraine and Belarus (where ASF had also been detected), Russia unfairly discriminated against the EU.

The WTO Appellate Body largely upheld the findings and conclusions of the Panel (see *Trade Perspectives*, Issue No. 16 of 9 September 2016). However, the Appellate Body did reverse a key finding of the Panel pertaining to Article 6 of the SPS Agreement. According to Article 6.1 of the SPS Agreement, WTO Members must adapt SPS measures to the area (*e.g.*, country, part of a party, or all or parts of several countries) from which the good originated. Article 6.2 of the SPS Agreement clarifies that WTO Members must recognise disease-free areas, which are determined on the basis of, *inter alia*, geography, ecosystems, and the effectiveness of SPS controls. Notably, pursuant to Article 6.3 of the SPS Agreement, it is the burden of the exporting WTO Member (*e.g.*, the EU) to provide evidence of a '*disease-free*' status for relevant areas, but the importing WTO Member has the right to reasonable access to the area for inspecting, testing, and other relevant procedures. The Panel found that, since Russia '*recognises*' regionalisation in regards to ASF, its measures were consistent with its obligations under Article 6.2 of the SPS Agreement. The Appellate Body disagreed with the Panel's finding, but was unable to complete the analysis itself of whether or not Russia did recognise the concepts of pest- or disease-free areas and areas of low pest or disease prevalence in respect of ASF. Nonetheless, the Appellate Body did state clearly that it believed, under Article 6.2 of the SPS Agreement, that WTO Members not only have the obligation to acknowledge or recognise the concept of regionalisation, but an obligation to "*render operational*" its concepts. In addition, before the WTO Appellate Body, Russia had argued that, under Article 6.3 of the SPS Agreement, it should have been given time to examine and evaluate all of the relevant evidence provided by the EU before removing the prohibition on respective imports. The Appellate Body rejected Russia's argument, finding that any temporal characteristics of Article 6 of the SPS Agreement are covered by the factors to consider under Article 6.1 and 6.2 of the Agreement when determining whether an area is, and will likely remain, disease-free.

Another notable aspect of the Panel Report pertaining to regionalisation concerns obligations for WTO Members within their own territories, when importing goods from other WTO Members. The Panel Report found that Russia failed to adapt its measures to the SPS characteristics of areas within the Russian territory to which the products at issue were destined. This finding was not appealed, but the Appellate Body used it as justification to uphold the Panel's findings regarding the inconsistency of Russia's measures against imports of relevant products from Latvia. In the future, this may also serve as a persuasive '*precedent*' confirming WTO Members' obligations to compartmentalise against pests and diseases within their own territories as they pertain to goods being imported from other WTO Members. This could be relevant to other disputes, such as a re-occurring dispute between South Africa and the EU on imports of citrus fruits (see *Trade Perspectives*, Issue No. 1 of 10 January 2014, Issue No. 20 of 31 October 2014 and Issue No. 19 of 9 October 2015), which the EU has controlled to varying levels due to detections of Citrus Black Sport (hereinafter, CBS), a plant disease caused by the fungus *Guignardia citricarpa Kiely* (renamed *Phyllosticta citricarpa (McAlpine) Van der Aa*). CBS is harmless to humans, but damages fruits' appearance by causing spots on fruit leaves and blemishes in fruits, potentially reducing both quality and quantity of harvests. Given the regional harvesting locations of citrus fruit in the EU (*e.g.*, in the southern parts of the EU) that could be affected by CBS, it could be argued that the EU should adapt its measures controlling the importation of citrus fruits from South Africa so that citrus fruits can be imported into areas of the EU where citrus fruit are not grown and harvested (*e.g.*, some northern and western parts of the EU), and those areas compartmentalised under the concept of regionalisation.

Overall, the outcomes of the Panel and Appellate Body Reports are not surprising. It appeared likely that the EU would be victorious against what may have been politically-motivated measures by Russia. The case highlights the need for countries to remain compliant with SPS obligations at the multilateral level, and reconfirms the ability of the WTO dispute settlement system to police measures that are unnecessarily trade restrictive and not based on science. On the other hand, the dispute also shines more light on the speed, or lack thereof, surrounding the resolution of WTO disputes. Here, Russia will have been able

to apply inconsistent measures for over two years, while significantly, and unjustly, injuring the swine and pork industry in parts of the EU. Interested parties should continue to alert relevant authorities concerning potentially WTO inconsistent measures, but also push to ensure that solutions are found in a timely and efficient manner.

## Reforming the EU's Emission Trading System – the need for a delicate balance between environmental targets and competitiveness

On 28 February 2017, the EU Member States' Energy Ministers, assembled within the context of the Council of the European Union (hereinafter, Council), agreed on a '*general approach*' concerning the *Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments* (hereinafter, the Proposal). This comes almost twenty months after the European Commission (hereinafter, Commission) released its Proposal on 15 July 2015. In the meantime, the Paris Agreement within the United Nations Framework Convention on Climate Change entered into force on 4 November 2016 and now significantly affects energy and emission policies. Achieving the right balance between environmental efforts to mitigate climate change and the needs of the industry remains a delicate task.

The Kyoto Protocol, adopted in 1997, was the first international convention setting legally binding emission reduction targets (or '*caps*'). The Commission's policies aim at establishing cost-efficient ways to make the European economy more climate-friendly and less energy-consuming. More specifically, the Commission's 2011 low-carbon economy roadmap notes that: (1) by 2050, the EU should cut greenhouse gas (hereinafter, GHG) emissions to 80% below 1990 levels; (2) milestones to achieve this target are 40% emissions cuts by 2030 and 60% by 2040; and (3) all sectors must contribute. The EU's approach is multi-faceted, notably consisting of an EU Emission Trading System (hereinafter, ETS) and of further reduction targets for sectors not covered by the ETS, such as transport, buildings, agriculture and waste. In 2016, the Commission proposed a new legislative framework aimed at including further sectors currently not subject to the ETS, most notably agriculture, in its general emission reduction targets (see *Trade Perspectives*, Issue No. 10 of 20 May 2016).

*Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community* is now subject to a revision process. The ETS promotes the reduction of GHG emissions in a cost-effective and economically efficient manner. The ETS is based on the '*cap-trade system'* principle, which means that a limited cap is set on the total amount of certain GHGs that can be emitted by defined industry sectors. Within the cap, companies can receive or buy allowances that can be traded with one another. The cap is then linearly reduced over time so that total emissions decrease. A growing number of sectors is included in the ETS and it covers the 28 EU Member States, as well as Iceland, Liechtenstein and Norway. Since the ETS was launched in 2005, it has evolved through a number of phases. The first phase, from 2005 to 2007, was a pilot phase to prepare for phase two, which lasted from 2008 to 2012 and aimed at meeting the EU targets agreed in the Kyoto Protocol. The current ETS phase three, stretching from 2013 to 2020, brought about major changes *vis-à-vis* the preceding phases. First, it established a single, EU-wide, cap on emissions replacing the previous system of national caps. Second, auctioning became the default method for allocating allowances moving away from the free allocation of allowances and harmonising the allocation rules for the remainder of allowances still given away '*for free*' to the industry. Third, additional sectors, such as aviation, were included in the scope of the ETS.

During the financial crisis in recent years, decreasing demand by the industry led to a significant oversupply of allowances and, consequently, to a significant decrease of allowance prices. Prices reached levels that did not incite the industry to further invest in low-carbon investments. Additionally, the Paris Agreement now provides for new commitments to

be taken into account. In view of these developments, and in preparation for phase four, stretching from 2021 to 2030, the Commission published its Proposal to amend Directive 2003/87/EC on 15 July 2015. On 15 February 2017, the European Parliament voted on its position concerning the ETS reform and, on 28 February 2017, the Council agreed on its '*general approach*' concerning the proposal.

The Commission's Proposal provides for a revision of the linear emission reduction factor to 2.2% from 2021, which aims at ensuring that the quantity of allowances (*i.e.*, the '*cap*') will decline at an increased annual pace resulting in an overall emission reduction of sectors under the ETS of 43% by 2030. The Proposal further provides that the benchmarks for the determination of the free allocation to the industry would be updated to reflect the technological progress realised over time in the relevant sectors. In addition, in order to support the modernisation of energy systems in certain EU Member States and to fully exploit the power sectors' potential to contribute to cost-effective emission reductions, the Proposal provides for the continuation of the free allocations to the power sector and the creation of a '*Modernisation Fund*', which aims at facilitating projects to improve energy efficiency.

The Council's task was to balance the diverging interests of EU Member States. Certain EU Member States, such as Austria, Germany, Greece and Italy reportedly supported a more flexible approach, allowing measures to avoid that businesses move outside the EU. Such moves are prone to cause '*carbon leakage'* (*i.e.*, the situation in which, due to ambitious climate policies, companies move production to countries with less ambitious policies, potentially leading to a rise in global emissions and in economically unpleasant '*side effects*' in the departing countries, in terms of loss of employment, de-industrialisation, etc.). At the same time, other EU Member States from Central and Eastern Europe that are still largely relying on coal production and use, reportedly pushed for support measures aimed at modernising their respective economies.

Consequently, three key areas of amendments with respect to the Proposal can be identified and should be analysed by stakeholders in more detail. First, the Council amended Recital 6 and Article 10a(5a) of the Proposal in order to accommodate concerns with respect to carbon leakage by increasing the availability of free allowances for the industry. This would be achieved by increasing the share of allowances that are not auctioned, but given out freely by 2%, in case the so-called '*cross-sectoral correction factor*' (CSCF, *i.e.*, the factor to ensure total allocation remains below the maximum amount fixed in Directive 2003/87/EC) is triggered. This would, however, impede the target of achieving the auctioning of all allowances over time and currently foreseen by Directive 2003/87/EC. Second, amendments to Recitals 16 and 16a, and a new article amending Article 1 of Decision EU 2015/1814, provide that, in instances of low demand for emission permits, excess permits would be directed more quickly to the new system of the market stability reserve (hereinafter, MSR), which was established in 2015, but will only be activated in January 2019. As another new aspect, the amendments provide for the possibility, starting in 2024, to cancel permits in the MSR should the content of the MSR exceed a certain level. Finally, and in order to accommodate the interests of coal-reliant EU Member States, the '*general approach*' provides for simpler and more transparent provisions with respect to the financial support schemes aimed at assisting such countries with their efforts transitioning to lower-carbon alternatives. In this regard, the Council amended Recital 11 and the proposed new Article 10d concerning the establishment of a '*Modernisation Fund*'.

The Council's '*general approach*' already reflects most of the key aspects contained in the European Parliament's position, adopted on 15 February 2017. The amendments by the Council are also likely to be welcomed by the EU's industry. In fact, all three key areas included in the Council's '*general approach*' and highlighted by Arias Cañete, the European Commissioner for Climate Action and Energy, were previously included in a statement by BusinessEurope (*i.e.*, the lobby group representing European enterprises) of 27 February

2017, one day prior to the Council meeting. The '*general approach*' only falls short with respect to the shift from auctioned allowances to free allowances, where BusinessEurope had called for a shift by 5%. More generally, BusinessEurope underlined the importance to strike "*the right balance between achieving ambitious environmental targets, boosting energy sector investments and ensuring industrial competitiveness*". Non-governmental organisations (hereinafter, NGOs) also weighed in on the Proposal, noting steps in the right direction while, at the same time, calling for a more ambitious approach during the upcoming trilogue negotiations between the Commission, the Council and the European Parliament. However, taking into account current knowledge on climate change and the commitments undertaken within the Paris Agreement, NGOs particularly note that the current Proposal falls short of accommodating pledges by the EU under the Paris Agreement. The pledge of limiting global warming to well below 2 degrees requires participating countries to continuously scale up emission cuts. The NGOs forecast that the EU would likely have to revisit the ETS within a rather short timeframe and long before the end of the fourth phase in 2030. Indeed, the '*general approach*' specifically notes that the "*[t]he provisions of the Directive should be kept under review in light of the implementation of the Paris Agreement […]*". Also calling for a more ambitious approach is the EU's renewable energy sector, which has been thriving in recent years. This, however, could lead to a continuous revisiting of the commitments and the respective measures are poised to lead to a period of legal and economic uncertainty for businesses in the EU. Businesses must be able to plan and to factor in upcoming changes.

After the adoption of the European Parliament's position and the Council's '*general approach*', the next step of the legislative procedure will now be the trilogue negotiations, aimed at agreeing on a compromise text of the revised Directive 2003/87/EC. The trilogue process, expected to be concluded before the 2017 summer break, will be the last opportunity for stakeholders to participate in the process and to underline relevant positions. Interested stakeholders should, therefore, diligently analyse the Proposal and the positions by all three EU institutions and interact with the relevant interlocutors. While the positions do not appear to significantly deviate from each other, the trilogue process may still alter the current Proposal. While stakeholders may share the environmental targets, the implications on businesses, production and trade must also be taken into account.

## Undermining the CETA? Canadian concerns about planned country of origin labels for pasta in Italy

On 15 February 2017, Canada's Agriculture Minister, Lawrence MacAulay, has raised initial concerns about Italy's proposal to require country of origin labels (hereinafter, COOL) on pasta sold in Italy, a move that is alarming Canadian wheat exporters to the EU just as the European Parliament voted in favour of the Comprehensive Economic and Trade Agreement between the EU and Canada (hereinafter CETA) and as EU Member States started the ratification process. The conclusion of the CETA caused significant contentions during the course of 2016 and agreement was finally reached at the end of October (see *Trade Perspectives*, Issue No. 19 of 21 October 2016 and Issue No. 13 of 1 July 2016). In EU Member States, there is a wave of measures being adopted or being trialled, which are aimed at supporting the domestic food industry by making COOL mandatory. France recently got the green light from the Commission to trial mandatory COOL for processed meat and dairy products, prompting Italy, Greece, Lithuania and Portugal to request similar labelling (see *Trade Perspectives*, Issue No. 1 of 13 January 2017).

On 20 December 2016, after an inter-ministerial agreement by the Italian Minister of Agriculture, Food and Forestry Policies, Maurizio Martina, and the Minister of Economic Development, Carlo Calenda, a draft decree introducing mandatory COOL for pasta sold in Italy (*Schema di Decreto interministeriale concernente l'indicazione dell'origine in etichetta del grano duro per le paste di semola di grano duro, in attuazione del regolamento (UE) n.*

*1169/2011, relativo alla fornitura di informazioni sugli alimenti ai consumatori,* hereinafter, the draft decree) was submitted to the Commission in order to formally start the authorisation process envisaged at EU level under *Regulation (EU) No. 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers* (hereinafter, FIR). Italy seeks approval of a labelling scheme that would identify where the durum wheat was grown and milled into semolina (*i.e.*, the coarse, purified wheat middlings of durum wheat used in making pasta). Italian produced pasta is made from durum wheat of Italian origin and partly imported from other countries. In one production batch of pasta, the origin of semolina and the origin of the durum wheat may or may not be the same. The proposed label is intended to clarify this point. With the draft decree, the Italian Government aims at raising the profile of Italian quality grain production and increase domestic supply of pasta, giving maximum transparency of information to consumers, indirectly protecting farmers and strengthening the strategic sector of food '*Made in Italy*'. The draft decree would establish a new COOL scheme to protect wheat and pasta products, such as already done with dairy products. Since 1 January 2017, mandatory COOL for milk and dairy products in Italy requires food business operators to clearly indicate to consumers the origin of the raw materials of many products such as butter, yogurt, mozzarella, cheeses and milk.

The draft decree recalls the report of the Commission to the European Parliament and the Council of 20 May 2015 under Article 26(5) of the FIR regarding the mandatory indication of the country of origin or place of provenance for single ingredient food products and for ingredients that represent more than 50% of a food. The draft decree also refers to Article 26(3) of the FIR, which provides that where the country of origin or the place of provenance of a food is given and where it is not the same as that of its primary ingredient: (a) the country of origin or place of provenance of the primary ingredient in question shall also be given; or (b) the country of origin or place of provenance of the primary ingredient shall be indicated as being different to that of the food. The application of this paragraph is subject to the adoption of implementing acts, which to date have not yet been adopted. However, the draft decree refers to the resolution of the European Parliament of 12 May 2016, by which the Commission was invited to assess the possibility of extending mandatory COOL to mono-ingredient foods or foods with a predominant ingredient.

Without EU legal guidance for the wheat and pasta sector, Article 2 of the draft decree provides that, on the label of the pasta, the following information must be indicated: (a) the '*origin of the wheat*': the name of the country in which the durum wheat was grown; and (b) the '*origin of the semolina*': the name of the country in which the semolina was obtained (through milling). If the origin of the semolina and the provenience of the durum wheat are the same, the label should display '*durum wheat and semolina 100%*' followed by the country of origin. In case the blends come from different origins, '*EU countries*' or '*extra EU countries*', may be indicated. If these steps are performed in the territory of several countries, depending on the origin, the following phrases may be used: '*EU countries*', '*Non-EU countries*', and '*EU and Non-EU countries*'. Also, if the durum wheat is grown at least 50% in one country, such as Italy, the words: '*Italy and other EU country and/or non-EU country*' may be used. In any case, the rules will neither be applied to pasta made in other EU countries (Article 6 foresees a mutual recognition clause) nor for Italian pasta intended for export (since the labelling rules to be respected are those in force in the target market).

Should the Commission not object to the COOL scheme for durum wheat within three months, the decree will be published in the Italian Official Journal and will enter into force 180 days thereafter. Article 7 of the draft decree contains transitional and final provisions. The decree shall apply on an experimental basis until 30 April 2020. The Ministry of Agriculture, Food and Forestry Policies and the Ministry of Economic Development would be required to provide the Commission with a report on the application of the provisions of this decree by 31 December 2018. If the Commission adopts implementing acts in accordance with Article 26(5) and (8) of the FIR, before 31 March 2019, the decree would cease to be

effective from the day of entry into force of the same. The envisaged report may allow for an opportunity to review data on consumer interest and willingness to pay, and on the potential impact on the internal market.

According to Paragraph 2 of Article 39 of the FIR, EU Member States' provisions on COOL, in addition to harmonised EU COOL legislation (see *Trade Perspectives*, Issue No. 1 of 13 January 2017), are only permitted where there is a proven link between certain qualities of food and its origin or provenance. When notifying such measures to the Commission, EU Member States must provide evidence that the majority of consumers attach significant value to the provision of that information. It needs to be carefully assessed whether the Italian draft decree and the information submitted to the Commission fulfil these requirements. As regards the evidence, Italy appears to refer to results of a public consultation, carried out in accordance with Italian legislation, showing a high interest from consumers for the indication of the place of origin of pasta. In fact, an online public consultation on the labelling of food products was conducted by the Ministry of Agriculture from November 2014 to March 2015 that involved 26,547 participants answering a questionnaire with 11 questions on the importance of product traceability, the indication of origin and transparency of the information on the label. For 8 out of 10 Italians, the fact that a product is made with Italian raw materials and produced in Italy plays a crucial role at the time of purchase.

Italians appear to want to know the origin of the raw materials, in particular on products such as fresh meat and milk (95%), dairy products such as yogurt and cheese (90%) and pasta (83%). Nearly 22,000 people (82%) also stated that they are willing to spend more in order to have the certainty of the Italian provenance of the product, with almost half of the respondents ready to spend 5-20% more. The figures appear to reflect consumer preferences, but the FIR requires that there to be a proven link to quality. However, the FIR does not establish requirements or provide details for the proven link between certain qualities of food and its origin. The information provided by France, for its trial on mandatory COOL for meat and milk used as ingredients, appears to have sufficed since the Commission did not raise any objection to the French measure and declared "*that the potential effects on the internal market, including its impact on imported foods from other Member States, would be evaluated in the context of the French authorities' report due in 2018*". The link between the quality of the foods concerned and their origin may be questioned and a preference may be given for voluntary COOL and for existing food quality schemes. Additionally, high costs would result from a pilot project.

The issue has created some controversy within the Italian agricultural supply chain, which denounced the massive use of foreign wheat. This, however, appears to be necessary, since the total Italian production is not sufficient to satisfy demand. Cultivation is concentrated mainly in the south, where Puglia and Sicily alone represent almost half of the national durum wheat production. While Italy is the EU's largest producer and the second largest producer of durum wheat worldwide, 2.3 million tonnes of durum wheat still have to be imported every year. The imported amount even increased by 2.3% in the first ten months of 2016, as compared to the same period of 2015. Imports from Ukraine have reportedly received a boost after a free trade agreement was signed between Ukraine and the EU on 1 January 2016, resulting in Ukrainian wheat imports increasing to 579,000 metric tonnes and making Ukraine the third largest import origin for Italy after Canada and France.

In particular, the issue of mandatory COOL for pasta products sold in Italy has alarmed Canada and Canadian wheat exporters. These concerns come only around six months after the signing of the Comprehensive Economic and Trade Agreement (hereinafter, CETA) between the EU and Canada, which is intended to significantly facilitate trade between the two economies. Most provisions of the CETA are soon expected to be provisionally applied, once the agreement has been ratified by Canada. The CETA will significantly enhance Canadian manufacturers' access to the EU market. More specifically, the CETA will provide duty-free access for durum wheat, which was previously subject to a bound tariff of USD 190

per metric tonne, over a 7 year phase-out period. While the applied tariff rate was already at 0%, the CETA now provides Canadian wheat producers the certainty that tariffs will not increase. Canada is the biggest exporter of durum wheat to Italy and Canadian exporters and farmers now fear that the move by Italy would depress prices in Canada, as it would require Italian pasta makers to segregate supplies by country.

Within three months from Italy's notification of the draft decree, the Commission will have to consult the Standing Committee on Plants, Animals, Food and Feed (composed of representatives from the Commission and the Member States, hereinafter SCPAFF) on the matter. The Italian delegation is then expected to provide details on the pasta COOL scheme. During that meeting, EU Member States will have the opportunity to raise concerns about an eventual negative impact of the Italian measure on non-Italian suppliers. It can be expected that some delegations will oppose mandatory COOL, expressing a preference for a harmonised approach at EU level. The Commission may then raise objections *vis-à-vis* the Italian draft decree. European lawmakers have shown an increasing appetite for labelling, due to consumer demands for information about food, and Italy has also said that labelling would help its pasta industry better compete with foreign competition. Such labelling might, however, be considered disruptive to the single market and violate international trade rules. Interestingly enough, France, which has just established its own national COOL scheme for milk and meat as food ingredients, is a major exporter of wheat to Italy and would be significantly affected by the Italian draft decree, which is poised to prompt Italian companies to prefer Italian wheat. The potentially protectionist measure would also likely create extra costs for Italian pasta-makers that use Canadian or French wheat supplies, thereby likely resulting in lower prices for Canadian and French farmers and less demand for Canadian and French wheat. The CETA was meant to enhance trade between the EU and Canada, but the ongoing controversy about the COOL labelling schemes in Italy (and beyond) suggests that the trade relationship between the two parties may be already tested shortly after the conclusion of the agreement.

In the future, the Court of Justice of the European Union (hereinafter, CJEU) will probably have to decide on whether national EU Member States' COOL measures comply with EU law, in particular the provisions on free movement of goods. For example, the CJEU may receive a question referred for a preliminary ruling in the context of an appeal against a penalty imposed under such a national COOL scheme. The increased (regulatory) activity in EU Member States and in the EU on COOL (in particular the reports of France after its trial, but also of other EU Member States like Italy and the eventual EU-wide legislative proposals put forward by the Commission) should be closely monitored and stakeholders should be prepared to participate in shaping any harmonised EU legislation by interacting with the relevant EU institutions, EU Member States, trade associations and affected stakeholders. These schemes will need to be EU and WTO consistent so as to avoid potentially costly and destabilising litigation and legal uncertainty for economic operators and consumers.

## Recently Adopted EU Legislation

### Trade Remedies

- *Commission Implementing Regulation (EU) 2017/423 of 9 March 2017 re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by Fujian Viscap Shoes Co. Ltd, Vietnam Ching Luh Shoes Co. Ltd, Vinh Thong Producing-Trading-Service Co. Ltd, Qingdao Tae Kwang Shoes Co. Ltd, Maystar Footwear Co. Ltd, Lien Phat Company Ltd, Qingdao Sewon Shoes Co. Ltd, Panyu Pegasus Footwear Co. Ltd, PanYu Leader Footwear Corporation, Panyu*

*Hsieh Da Rubber Co. Ltd, An Loc Joint Stock Company, Qingdao Changshin Shoes Company Limited, Chang Shin Vietnam Co. Ltd, Samyang Vietnam Co. Ltd, Qingdao Samho Shoes Co. Ltd, Min Yuan, Chau Giang Company Limited, Foshan Shunde Fong Ben Footwear Industrial Co. Ltd and Dongguan Texas Shoes Limited Co. implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14*

- *Commission Implementing Regulation (EU) 2017/422 of 9 March 2017 imposing a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*

- *Commission Implementing Regulation (EU) 2017/421 of 9 March 2017 imposing a definitive countervailing duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council*

- *Commission Implementing Regulation (EU) 2017/367 of 1 March 2017 imposing a definitive anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from 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 and terminating the partial interim review investigation pursuant to Article 11(3) of Regulation (EU) 2016/1036*

- *Commission Implementing Regulation (EU) 2017/366 of 1 March 2017 imposing definitive countervailing duties on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China following an expiry review pursuant to Article 18(2) of Regulation (EU) 2016/1037 of the European Parliament and of the Council and terminating the partial interim review investigation pursuant to Article 19(3) of Regulation (EU) 2016/1037*

## Food and Agricultural Law

- *Commission Implementing Regulation (EU) 2017/420 of 9 March 2017 concerning the authorisation of a preparation of thyme oil, synthetic star anise oil and quillaja bark powder as feed additive for chickens for fattening, chickens reared for laying, minor avian species for fattening and reared for laying (holder of the authorisation Delacon Biotechnik GmbH)*

- *Commission Implementing Regulation (EU) 2017/425 of 9 March 2017 on the minimum selling price for skimmed milk powder for the sixth partial invitation to tender within the tendering procedure opened by Implementing Regulation (EU) 2016/2080*

- *Commission Implementing Regulation (EU) 2017/384 of 2 March 2017 amending Annexes I and II to Regulation (EU) No 206/2010 as regards the models of veterinary certificates BOV-X, OVI-X, OVI-Y and RUM and the lists of third countries, territories or parts thereof from which the introduction into the Union of certain ungulates and of fresh meat is authorised*

## Other

- *Council Decision (EU) 2017/418 of 28 February 2017 on the conclusion on behalf of the European Union of the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands and the Implementation Protocol thereto*

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