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Recognition of sustainability in tariff nomenclatures: can it work?

On 2 May 2017, WTO Members' delegates took part in a regularly scheduled meeting of the WTO Committee on Market Access, where, in relevant part, they addressed efforts to update goods Schedules so as to take into account amendments to the Harmonized Commodity Description and Coding System (*i.e.*, Harmonized System, or HS) of the World Customs Organisation (hereinafter, WCO), as well as notifications on quantitative restrictions implemented by WTO Members. These efforts highlight the commendable efforts by WTO Members to maintain transparency and continually update their tariff nomenclatures, but they also serve as an opportunity to discuss the evolving overlap between goods Schedules and non-tariff measures, pertaining to, most notably, environmental protection and sustainability.

The HS is a tariff nomenclature or, rather, a multilateral system developed to categorise goods traded between countries in order to facilitate uniform duty application and collect international trade statistics. The HS was first adopted by the Contracting Parties of the General Agreement on Tariffs and Trade 1947 (hereinafter, the GATT), all of whom eventually became Members of the WTO when it was established in 1995. The predecessor of the HS was the Customs Cooperation Council Nomenclature, which was developed in the 1950s. The HS classifies over 5,000 goods, which are organised by type, and includes the descriptions of the goods. Since the first HS system was adopted in 1988, it has undergone revisions every five to eight years. The most recent revision of the HS (referred to as HS2017) entered into force on 1 January 2017. According to a Report of the WTO Secretariat titled "*Situation of Schedules of WTO Members*" (revised) released on 21 April 2017, WTO Members are still at very different stages of reform with respect to their own tariff Schedules. Notably, some WTO Members that currently apply the HS, and even the HS2017, still have pre-Uruguay Round (*i.e.*, pre-WTO) tariff concessions that were scheduled on the basis of a different nomenclature. At the most recent meeting of the Committee on Market Access, WTO Members addressed a number of the modifications that are necessary to reflect the newest version of the HS.

In addition to the discussions pertaining to the HS mentioned above, a major topic addressed at the 2 May 2017 meeting of the Committee on Market Access was the use of quantitative restrictions to trade implemented and notified by WTO Members that were justified as necessary to protect, *inter alia*, plant life or health. Leading up to the 2 May meeting, the WTO Secretariat published a revised version of a Report titled "*Quantitative Restrictions: Factual Information on Notifications Received*". There, the WTO Secretariat states that, as of 21 April 2017, 32 WTO Members have submitted notifications of all quantitative restrictions in force for the biennial notification periods of 2012-2014, 2014-2016, and/or 2016-2018. These 32 WTO Members maintain a total of 886 quantitative restrictions, which account for 1,029

measures (a quantitative restrictions may be enforced by more than one measure). The data shows that 66.8% of the measures pertained to imports, with the remaining 32.2% addressing exports. The four main types of quantitative restrictions identified in the report are: 1) non-automatic licensing procedures; 2) prohibitions of products; 3) conditional prohibitions of products; and 4) quotas. In terms of the product scope, the top three types of goods targeted by quantitative restrictions include: 1) organic chemicals; 2) nuclear reactors, boilers, machinery and mechanical appliances; and 3) miscellaneous chemical products.

The Report of the WTO Secretariat makes it clear that the most common justification used for the implementation of quantitative restrictions is Article XX(b) of the GATT, which provides that, as long as measures are not provided in a manner that would constitute arbitrary or unjustified discrimination, the GATT does not prevent WTO Members from adopting measures "*necessary to protect human, animal or plant life or health*". Of the 630 quantitative restrictions in the data set, Article XX(b) was cited 40% of the time, and the next most cited justification was "*national security*" under Article XXI of the GATT, which was used in 17.4% of the instances. In this regard, it is important to recall that one of the main functions of the international trade rules is to protect against discrimination. For example, according to Article I of the GATT, any advantage, favour, privilege or immunity granted to products imported from one country must be accorded to any '*like*' product imported from any other WTO Member. This is known as '*Most-Favoured-Nation Treatment*', or MFN treatment. Similarly, Article III of the GATT requires that no WTO Member's product be subject to internal taxes or other internal charges in excess of those applied to the '*like*' domestic products, and that foreign products in general be accorded "*treatment no less favourable*" than that offered to the '*like*' products of national origin. This concept is known as '*National Treatment*'. However, the GATT also provides for exceptions to these restrictions on discriminatory treatment, including more favourable concessions under free trade agreements and, more importantly, the General Exceptions to GATT obligations outlined in Article XX, such as Article XX(b) of the GATT introduced above.

An interesting intersection of tariff and non-tariff measures (*e.g.*, HS classifications and the implementation of quantitative restrictions), which was recently addressed by the Committee on Market Access, has gained attention due to recent actions by the European Parliament. In particular, on 4 April 2017, the European Parliament adopted a "*Resolution on palm oil and deforestation of rainforests*" (hereinafter, the Resolution). The development of the Resolution was ongoing since March 2016, when the European Parliament first held a public hearing on the topic. The Resolution makes a number of recommendations to the European Commission. In relevant part, the Resolution calls on the European Commission to initiate a reform of the HS so as to distinguish between certified sustainable and unsustainable palm oil. This would be a novel approach, given that, in large part, distinctions between sustainable and unsustainable goods have been the responsibility of the private sector or non-governmental organisations, including through the use of international bodies such as the Roundtable on Sustainable Palm Oil (*i.e.*, the RSPO). Product manufacturers may adhere to such standards and receive certification and approval to apply product packaging marking, which many consumers consider reliable to guide their pursuit of sustainably-produced and/or '*green*' products. However, tying sustainability to tariff classifications (*i.e.*, government measures), which implies that sustainable goods could be subject to lower tariff duties than those applied to comparable ('*like*') goods, may lead to WTO inconsistencies.

In the infamous *US – Tuna (Mexico)* dispute under the GATT, a GATT panel concluded that the US could not prohibit imports of tuna products from Mexico on the basis of Mexico's regulations not meeting US requirements (see *Trade Perspectives*, Issue No. 5 of 13 March 2009, Issue No. 10 of 18 May 2012 and Issue No. 21 of 20 November 2015). Instead, the US would have had to apply its regulations to the quality and content of Mexican tuna exports. This concept is commonly referred to as the "*product versus process*" debate. When applied to the sustainable or unsustainable nature of a good, it remains to be tested whether a WTO adjudicatory body would find that, *inter alia*, sustainable and unsustainable palm oil are different products by virtue of their different production processes. Further, as seen with the

trade restrictions reviewed above, could the measures be justified as being necessary to protect the environment?

One key legal issue would thus be the question of whether sustainable and unsustainable palm oil would be considered '*like*' products under Article I of the GATT. The '*likeness*' analysis has traditionally looked at: 1) the properties, nature and quality of the products at issue; 2) their end-uses; 3) consumers' tastes and habits (*i.e.*, '*consumers' perceptions and behaviour*'); and 4) the tariff classification of the products. Indeed, the factors analysed to determine '*likeness*' focus on specific aspects of a final product, rather than the process used to achieve that final product. Aside from this issue, it is also important to recognise the fragmented nature of sustainability standards throughout the world. WTO Agreements incorporate by reference accepted international standards, but, with respect to palm oil sustainability, there are still debates as to which sustainability criteria are most appropriate and no globally accepted sustainability standard currently exists. In the European Parliament's Deforestation Resolution, one recommendation called on the EU to unilaterally develop its own palm oil sustainability criteria, to then table for use in future international agreements, and even apply domestically on imports. A better – and likely more WTO-consistent approach – would include joining together with major palm oil producing countries, and merging and amending current sustainability schemes that are used throughout the world.

Interested parties should monitor developments, especially should the European Commission consider proposing legislation embracing some of the controversial recommendations outlined in the European Parliament's Deforestation Resolution. As trade and environment continue to intersect, governments must remain cognisant of their trade obligations, and always consider adopting the least trade-restrictive measures for purposes of protecting the environment.

A broad reading of EU competences – the CJEU's unexpected take on the EU-Singapore Free Trade Agreement

On 16 May 2017, the Court of Justice of the European Union (hereinafter, CJEU) published its opinion on the division of competences between the European Union and its Member States, with respect to the EU-Singapore Free Trade Agreement (hereinafter, EUSFTA). This will have important consequences for the ratification of the EUSFTA and for EU trade policy more in general. In particular, the CJEU determined that the provisions of the agreement relating to non-direct foreign investment and those relating to dispute settlement between investors and States do not fall within the exclusive competence of the European Union, so that the EUSFTA cannot, as it stands, be concluded without the ratification by EU Member States' national parliaments. However, all other contentious areas were deemed by the CJEU to be of exclusive EU competence, unexpectedly opining against the preceding opinion of the Court's Advocate General.

The EU originally envisaged to conclude a free trade agreement with the entire Association of Southeast Asian Nations (hereinafter, ASEAN), of which Singapore is a member. As implementation of this idea proved difficult, primarily for political reasons, the European Commission (hereinafter, Commission) proposed negotiating bilateral free trade agreements with individual ASEAN countries, starting with Singapore. Negotiations were already concluded in September 2013, for most parts of the agreement, and in October 2014 for the investment protection chapter. After the final text of the agreement was initialled by the EU and Singapore in May 2015, a disagreement arose between the Commission and delegations from EU Member States over whether the EUSFTA deals with areas that do not fall within the competence of the EU and should, therefore, be signed and concluded as a '*mixed*' agreement (on the notion of '*mixed*' agreements, see *Trade Perspectives*, Issue No. 13 of 1 July 2016). The Commission referred the matter to the CJEU for an advisory opinion. The Commission's request consisted of two parts. Firstly, the Commission asked whether the

EU is competent to sign and conclude the EUSFTA alone. Secondly, it asked which provisions of the EUSFTA fall within the exclusive competence of the EU, which are shared competences between the EU and EU Member States, and which are exclusive competences of EU Member States.

On 21 December 2016, one of the Advocate Generals of the CJEU (hereinafter, AG), Eleanor Sharpston, delivered her opinion. She determined that the EUSFTA can only be concluded by the EU and the EU Member States acting jointly. However, the AG determined a much larger number of areas to be of shared competence between the EU and its Member States (see *Trade Perspectives*, Issue No. 1 of 13 January 2017). More specifically, the AG had determined that the areas of transport services, investments other than foreign-direct investment, government procurement of transport services, non-commercial aspects of intellectual property rights and, with respect to the Chapter on Trade and Sustainable Development, the aspects related to labour protection standards and environmental protection standards, would fall under the shared competence of the EU and its Member States. Additionally, the AG noted that the termination of existing bilateral investment treaties, between Singapore and certain EU Member States, would fall under the exclusive competence of EU Member States.

In its own opinion, the CJEU follows the AG's opinion only to a very limited extent. As the AG, the CJEU quickly concludes that Chapters 2 to 7 of the EUSFTA (*i.e.*, Market Access, Trade Remedies, Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Customs and Trade Facilitation, and NTBs to Trade and Investment in Renewable Energy Generation) fall within the scope of the common commercial policy of Article 3(1)(e) of the Treaty of the Functioning of the European Union (hereinafter, TFEU). The CJEU analyses in great detail the issue of transport services as part of Chapter 8 on services, which is excluded from the common commercial policy by Article 207(5) of the TFEU, as well as the issue of government procurement related to transport services in Chapter 10. Here, the CJEU looks into the issue that Article 216 of the TFEU gives to the EU the competence to conclude international agreements, which are likely to affect common rules or alter their scope and that, under Article 3(2) of the TFEU, this competence of the EU is exclusive. The CJEU then analyses the different types of transport services (*i.e.*, maritime, rail and road transport) and reaches the conclusion that the commitments for the relevant transport types pertain to areas already covered to a large extent by common EU rules. Therefore, the scope of those rules may be affected or altered by the EUSFTA's commitments and, therefore, the EU has exclusive competence under Article 3(2) of the TFEU.

The next area analysed in greater detail relates to the commitments in Chapter 9, relating to investment protection. The CJEU underlines that the language of Article 9.1 of the EUSFTA makes it apparent that the chapter relates both to direct investment and to any other type of investment, and that Article 207(1) of the TFEU provides that only EU acts concerning '*foreign direct investment*' fall within the common commercial policy. First, the CJEU comes to the conclusion that provisions of Chapter 9 related to foreign direct investment fall under the scope of the common commercial policy. Second, the issue of non-direct investment is discussed further and the CJEU concludes that the conclusion of an international agreement concerning non-direct foreign investment is currently not provided for in a legislative act of the EU within the meaning of Article 3(2) of the TFEU and that, therefore, the EU does not have exclusive competence on the matter. With respect to Article 9.10 of the EUSFTA, providing for the termination of existing bilateral investment treaties between a certain number of EU Member States and Singapore, the CJEU notes that, since the EU has acquired exclusive competence in the area of foreign direct investment, the EU has the competence to replace and thereby terminate existing agreements. This is an interesting approach, after the AG had determined this termination to fall within the exclusive competence of the respective EU Member States. Finally, as regards investor-state dispute settlement, the CJEU notes that EU Member States can be parties to such disputes and that Article 9.16 of the EUSFTA allows claimant investors to submit a dispute to arbitration, with Article 9.16.2 of the EUSFTA presupposing consent to such submission. According to the

CJEU such mechanism requires this matter to fall within a competence shared between the EU and its Member States.

The AG considered the non-commercial aspects of intellectual property rights to fall out of the scope of the common commercial policy and to be of shared competence. However, the CJEU disagrees and confirms that the entire Chapter 11 on intellectual property rights is "*intended to facilitate and govern trade between the EU and Singapore and that its provisions are such as to have direct and immediate effect thereon*", so that the entire chapter falls within exclusive EU competence. Furthermore, the CJEU confirms that Chapter 12, and the commitments on competition and related matters, fall within the common commercial policy and, thereby, within exclusive EU competence.

Finally, the AG had noted in her opinion that the provisions of Chapter 13 on Trade and Sustainable Development on labour protection standards and environmental protection standards were of shared competence. In its opinion, the CJEU cites a number of EU treaty provisions, determining that the objective of sustainable development forms an integral part of the EU's common commercial policy. The CJEU goes on to underline that the EUSFTA's Chapter 13 does not concern the scope of the international agreements on social protection of workers and environmental protection to which it refers nor the competences with respect to those agreements. While the CJEU then recalls that the common commercial policy cannot be used to regulate the levels of social and environmental protection, this would also not appear to be the Parties' intention in the context of the EUSFTA. As the provisions of Chapter 13 are essentially intended to regulate the trade between the Parties, the CJEU determines Chapter 13 to fall within the common commercial policy and the exclusive competence of the EU.

The opinion, despite coming to the conclusion that the EUSFTA, in its current form, cannot be concluded by the EU alone, is actually a strong opinion in favour of broad EU competences. It is also an unexpected and rather rare case, in which the CJEU decides against key elements of the opinion of its Advocate General, going much further than the AG had opined. For this very reason, EU Member States were reluctant to request the advisory opinion by the CJEU, fully aware of the traditional pro-EU and pro-integration stance of the CJEU. The Council of the EU and EU Member States looked into the details of the EUSFTA to find provisions that could fall outside of exclusive EU competence. Most of those provisions were now deemed to be of exclusive EU competence by the CJEU. The position of the EU, in the ongoing and future negotiating contexts, has thereby been considerably strengthened and the position of EU Member States likely been somewhat weakened. This decision will also be relevant for the '*Brexit*' negotiations between the EU and the UK, which will commence shortly. The future trade relationship between the EU and the UK can, therefore, be largely negotiated by the EU, without having to take into account the risks associated to the subsequent ratification by EU Member States. On the upside, a future trade agreement between the EU and the UK can now likely be concluded and enter into force more swiftly, now that EU Member States will likely not have to ratify such agreement, in case it does not include the areas deemed to be of shared competence.

Hence, the opinion by the CJEU makes the way forward more or less obvious, in a way that is good news for the EU and for EU trading partners. The vast majority of the EUSFTA has been determined to be of exclusive EU competence. Two slightly different options appear to be available. The first option consists in the usual strategy pursued for previous EU trade agreements, which is the signature of the agreement as a whole, by the EU and all, currently, 28 EU Member States. The EU and all EU Member States would then begin the respective ratification processes according to their relevant domestic rules and procedures. After ratification by the EU and on the basis of a decision by the Council of the EU and the European Parliament, precisely defined parts of the agreement under exclusive EU competence would then be provisionally applied. This would be followed by the entry into force of the full agreement as soon as all EU Member States have ratified the agreement. A second option would be a more formal split-up of the agreement into two agreements by separating the Chapter on Investment Protection and Investor-State Dispute Settlement from

the rest of the agreement. The agreement, without the investment aspects, would then be signed and ratified by the EU and enter into force. The second agreement on investment protection would have to be signed and ratified by the EU and by all EU Member States. It would only enter into force after the ratification process has been completed by all Parties.

The opinion by the CJEU is an important step forward for EU trade policy and brings much needed clarity. Finally, the path has been cleared to conclude and ratify the EUSFTA. The long period of uncertainty, considering that the negotiations on most parts of the agreement were concluded in September 2013, will soon be over. Moreover, in light of the large number of FTAs currently under negotiation, this is also an important step forward with a view to adjust those agreements so as to ensure a swift entry into force once negotiations are completed. The EUSFTA and further agreements, such as the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, look poised to enter into force, or at least provisionally apply, in the near future. Stakeholders should prepare and be ready to take advantage of all trade-facilitating elements and instruments, as soon as they become available.

The regulatory framework on plant protection products in the UK after Brexit

On 3 May 2017, the UK House of Lords' EU Energy and Environment Subcommittee of the European Union Committee published a report entitled '*Brexit: agriculture*'. According to the report, the UK's agriculture and food sector will face "*enormous challenges*" following Brexit, both in relation to trade with the EU and within its own borders. A regulated area where non-tariff barriers might occur is the area of plant protection products (often just referred as '*pesticides*') and their residues in food. Brexit could, however, also present opportunities, as the report notes, with the country moving away from the EU's "*one size fits all*" policies on food and farming. In particular, in the area of pesticides, there could be a shift from the EU's current more '*precautionary approach*' to regulating chemicals, which emphasises the hazard of a given substance, to a more risk-based approach.

The UK House of Lords is the second chamber of the UK Parliament. It is independent from, and complements the work of, the elected House of Commons. The Lords share the task of making and shaping laws, and of checking and challenging the work of the UK Government. The UK House of Lords' EU Committee is appointed "*to scrutinise documents deposited in the House by a Minister, and other matters relating to the EU*". In practice, this means that the Select Committee (*i.e.*, a committee of the House of Lords in the UK Parliament), along with its Sub-Committees, scrutinises the UK Government's policies and actions with respect to the EU; considers and seeks to influence the development of policies and drafts laws proposed by the EU Institutions; and more generally, represents the UK House of Lords in its dealings with the EU Institutions and other EU Member States.

The UK House of Lords' report entitled '*Brexit: agriculture*' states that "*[o]nce outside the EU, the UK must develop its own external tariffs, and may find itself subject to the high external tariffs applied by the EU to agricultural products - to the detriment of UK farmers and food manufacturers*". In addition, the report warns that "*[t]he UK may also face non-tariff barriers when exporting agriculture and food products to the EU, resulting in delays at ports and additional administrative costs*." In Chapter 2 of the report, which addresses "*Withdrawing from the Common Agricultural Policy*", the report recalls that, in order to facilitate the functioning of the EU Single Market in agricultural products, the EU has set standards for food, farm animal health and welfare and plant protection products - what is called "*coherent farm-to-table*" measures. This regulatory framework also includes plant protection products (or pesticides) and the EU rules regulating the maximum level of traces of pesticides (*i.e.* '*residues*') allowed in food or feed. Before any plant protection product may be placed on the market or used, it must be authorised in the EU Member State(s) concerned. *Regulation (EC) No 1107/2009 of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directive 79/117/EEC and 91/414/EEC* lays down the rules and procedures for authorisation of such products. Before a plant protection product (or

pesticide) can be used in the EU, it must be scientifically evaluated by its manufacturer. The European Food Safety Agency (hereinafter, EFSA) then conducts an assessment of that evaluation at the European level, on the basis of which the European Commission (hereinafter, Commission) proposes the approval or non-approval to the Standing Committee on the Food Chain and Animal Health. EU Member States in that Standing Committee must ultimately vote on the approval of the active ingredients at the EU level. In practice, in the UK, authorisations for pesticides containing the EU-approved active ingredients are granted by the Chemicals Regulation Division (CRD) of the Health and Safety Executive (HSE) according to the *Food and Environment Protection Act 1985* (FEPA) and *Control of Pesticides Regulations* (COPR) 1986, which provide the overall legal framework for the control of pesticides in the UK.

The report refers to the regulation of pesticides as an area where the opportunity for change exceeds the risks in a post-Brexit era. However, although there may be significant opportunities to review the legislative framework underpinning agriculture in the UK, the UK House of Lords, in its report, notes that the scope for deregulation may be limited. Potential improvements have been reported to the UK House of Lords by, *inter alia*, the Crop Protection Association and the National Association of British and Irish Flour Millers: "*A recurring theme was for the UK to move to a more risk-based approach to plant protection product regulation. The EU takes a '*precautionary approach*' to regulating chemicals, which emphasises the hazard of a given substance to human and animal health.*" The report states that it has been argued that "*the principle of risk, backed up by good science, is just as good a principle to adhere to*". The UK Crop Protection Association agreed: "*[t]he use of hazard criteria for regulation of pesticides should not be retained by the UK following exit from the EU as it limits the range of pesticides available to growers and farmers without any concomitant improvement in protection of either human health or the environment.*" The UK House of Lords also quoted opponents of a deregulation of pesticides in the UK. The UK Pesticides Campaign stated that "*[t]he only real solution to eliminate all adverse health and environmental impacts of pesticides is to take a preventative approach and avoid exposure altogether*", while the Soil Association pointed out that "*[o]n something like endocrine disruptors, where effectively there is no safe threshold that can be defined, a hazard-based approach is the same as a risk-based approach*".

The EU process for active ingredient approval under *Regulation (EC) No 1107/2009* is, in fact, very lengthy. Arguably, there is scope for the UK to be considerably more rapid. Therefore, priorities for the future regulation of plant protection products include using a risk- rather than a hazard-based system of approval. The question is what this will mean in practice. The re-evaluation procedure of glyphosate is a good example The EU's approval of glyphosate was set to expire on 30 June 2016 (for more background on glyphosate, see *Trade Perspectives*, Issue No. 7 of 8 April 2016). On request of the Commission, the EFSA reviewed a report of March 2015 of the International Agency for Research on Cancer (IARC), an agency of the World Health Organisation, which classified glyphosate as "*probably carcinogenic to humans*" and created some controversy. It can be observed that both the EFSA and IARC are blamed for disregarding studies and being opaque as to the origin of the scientific findings included in their respective reports. The IARC considered in its assessment the extent of possible damage (hazard potential), while the EFSA goes beyond this approach and assesses how likely it is that this damage may occur (*i.e.*, the extent of the risk). The latter is, for example, dependent on the extent to which one is exposed to a potential '*hazard*'. Accordingly, '*hazard*' includes anything that can potentially cause damage, while the '*risk*' assessment aims at determining the actual '*risk*'.

The uncertainty over the renewal of glyphosate, the UK's most widely used herbicide (better known by the Monsanto brand name '*Roundup*') was reportedly one of the reasons that many British farmers voted to leave the EU in May 2016. Reportedly, withdrawing glyphosate from the market would be devastating to British farmers, who rely on the herbicide to treat weeds. More than 2 million hectares of land were treated with glyphosate in England and Wales in 2014. Without it, winter wheat and barley production would likely decline by about 12% and would reduce the cultivation of oilseed rape (used for oil and animal feed) by about

10%, according to the National Farmers Union. *Commission Implementing Regulation (EU) 2016/1056 of 29 June 2016 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval period of the active substance glyphosate* established a new deadline of "*6 months from the date of receipt of the opinion of the Committee for Risk Assessment of the European Chemicals Agency by the Commission (hereinafter, ECHA) or 31 December 2017, whichever is the earlier".* On 15 March 2017, the ECHA's Committee for Risk Assessment (hereinafter, RAC) agreed to maintain the current harmonised classification of glyphosate as a substance causing serious eye damage and being toxic to aquatic life with long-lasting effects. The RAC concluded that the available scientific evidence did not meet the criteria to classify glyphosate as a carcinogen, as a mutagen or as toxic for reproduction. The extension of the authorisation was, therefore, extended until 15 September 2017. There is no formal proposal yet, but on the basis of an information note of the European Commissioner for Health and Food Safety, Vytenis Andriukaitis, the College of European Commissioners agreed to the approach of restarting the discussions with EU Member States about the possible renewal of the approval of glyphosate for 10 years.

The UK will continue to meet its EU obligations while it remains a Member of the EU. The regulations that implement EU health and safety laws will stay in place. Health and safety regulations will be decided as part of the exit negotiations. Only when these negotiations are finished, will the UK actually leave the EU and will it no longer be bound by its rules. Until then nothing will change in practice. With the upcoming '*Great Repeal Bill*', the UK will incorporate all EU regulations into UK law and then undertake a likely lengthy review-and-revision process.

Should the UK develop its own procedures for the approval of plant protection products, non-tariff barriers would likely occur in trade with the EU (and *vice-versa*). Moreover, international standards, for example those set by the *Codex Alimentarius* Commission on maximum residue levels for pesticides, and WTO agreements, such as the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the WTO Agreement on Technical Barriers to Trade (TBT Agreement), apply to trade with any third country, and will thus constrain the UK's regulatory freedom to a certain extent. If glyphosate, for example, were to be still authorised in the UK, but banned in the EU, crops treated with it could only be used on the domestic (UK) market. Farmers would need separated storage facilities, some for exports to the EU and others for supplies to the domestic market. This would likely not be the only concern for farmers under a distinct UK policy on pesticides. The report of the House of Lords notes, in a paragraph on '*Supply chains and agricultural inputs*', the Agriculture Industries Confederation's (AIC) statement that, as regards crop protection products, such as pesticides, "*some 85% of the market is supplied with products manufactured elsewhere in the EU*".

There are strong calls in the UK, from farmers' unions and the Crop Protection Association, to reform the current system of approval of pesticides, which is currently based on EU law. Arguably, the system may shift from the current EU hazard-based approach to a more risk-based approach. Discussions on the future regulation of plant protection products in the UK are already ongoing and should be closely monitored by stakeholders, as formal Brexit negotiations will begin shortly.

Recently Adopted EU Legislation

Customs Law

- *Commission Implementing Regulation (EU) 2017/822 of 15 May 2017 amending Implementing Regulation (EU) No 343/2011 opening and providing for the administration of Union tariff quotas for wines originating in Bosnia and Herzegovina*

- *Commission Implementing Regulation (EU) 2017/803 of 8 May 2017 amending Regulation (EEC) No 316/91 concerning the classification of certain goods in the Combined Nomenclature*

Trade Remedies

- *Commission Implementing Regulation (EU) 2017/804 of 11 May 2017 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China*

Food and Agricultural Law

- *Commission Implementing Regulation (EU) 2017/843 of 17 May 2017 approving the active substance Beauveria bassiana strain NPP111B005, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011*

- *Commission Implementing Regulation (EU) 2017/842 of 17 May 2017 renewing the approval of the low-risk active substance Coniothyrium minitans strain CON/M/91-08 in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011*

- *Commission Implementing Regulation (EU) 2017/841 of 17 May 2017 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances alpha-cypermethrin, Ampelomyces quisqualis strain: aq 10, benalaxyl, bentazone, bifenazate, bromoxynil, carfentrazone ethyl, chlorpropham, cyazofamid, desmedipham, diquat, DPX KE 459 (flupyrsulfuron-methyl), etoxazole, famoxadone, fenamidone, flumioxazine, foramsulfuron, Gliocladium catenulatum strain: j1446, imazamox, imazosulfuron, isoxaflutole, laminarin, metalaxyl-m, methoxyfenozide, milbemectin, oxasulfuron, pendimethalin, phenmedipham, pymetrozine, s-metolachlor, and trifloxystrobin*

- *Commission Implementing Regulation (EU) 2017/840 of 17 May 2017 concerning the non-approval of the active substance orthosulfamuron, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market*

- *Commission Implementing Regulation (EU) 2017/838 of 17 May 2017 amending Regulation (EC) No 889/2008 as regards feed for certain organic aquaculture animals*

- *Commission Implementing Regulation (EU) 2017/831 of 16 May 2017 approving the active substance Beauveria bassiana strain 147, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011*

Other

- *Council Decision (EU) 2017/817 of 11 May 2017 establishing the position to be taken on behalf of the European Union within the World Trade Organisation on the modification of paragraph C(ii) of Annex 3 to the WTO Agreement as regards the frequency of WTO Trade Policy Reviews and of the rules of procedure of the Trade Policy Review Body*

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