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First step towards a global '*trade war*'? US President Trump announces to be ready to impose import tariffs on steel and aluminium

On 8 March 2018, US President Donald Trump signed two proclamations introducing new tariffs on steel and aluminium imports, while allowing US trading partners to apply for exemptions. More specifically, the US intends to impose a 25% import tariff on steel and a 10% import tariff on aluminium, which will enter into force within 15 days. According to President Trump, the measures aim at protecting both industries from unfairly traded imports that the Commerce Department has determined to pose a threat to US national security. Many WTO Members and international institutions reacted with expressions of concern and threats of countermeasures. The European Commission (hereinafter, Commission) immediately reacted and stated that the EU would contest the measure through the World Trade Organization's (hereinafter, WTO) Dispute Settlement should it also apply to the EU and that the Commission would impose countermeasures against the US in line with international trade rules.

A possible tariff increase on steel and aluminium is not a new idea. On 5 March 2002, the US had imposed similar tariffs on steel. The action taken by, at that time, US President George W. Bush, was the result of an investigation under Section 201 of the Trade Act of 1974 by the US International Trade Commission (ITC). The imposed duties were referred to as '*safeguard measures*'. The tariffs were imposed for a three-year period and progressively reduced, as required by the multilateral trade rules agreed within the framework of the WTO, starting at 30% in the first year, 24% in the second year and 18% in the third year. Tariffs were applied to all steel imports, regardless of their origin, with the exception of Canada and Mexico, which continued to trade on the basis of the rules of the North America Free Trade Agreement (hereinafter, NAFTA), and imports from most developing countries that were WTO Members, in line with Article 9 of the WTO Agreement on Safeguards. Shortly after the tariffs were imposed, the EU submitted a request for consultations to the WTO Dispute Settlement Body, with several other WTO Members following suit, and a panel was eventually established. On 11 July 2003, the relevant WTO panel published its report in the case of "*US - Definitive Measures on Imports of Steel*", ruling against the US steel tariffs. In its decision published on 10 November 2003, the WTO Appellate Body largely upheld the findings of the panel that each of the ten safeguard measures at issue was inconsistent with the US' obligations under Article XIX:1(a) of the GATT 1994 and the Agreement on Safeguards. In particular, the Appellate Body upheld the panel's conclusions that the measures on certain steel products were inconsistent with Articles 2.1 and 3.1 of the Agreement on Safeguards because the US had failed to provide a "*reasoned and adequate*"

explanation of how the facts (*i.e.*, downward trend at the end of the period of investigation) supported the determination with respect to "*increased imports*" of these products.

Contrary to the Bush Administration, US President Trump appears to intend to base the envisaged new tariffs on steel and aluminium on an investigation conducted under Section 232 of the US Trade Expansion Act 1962. Under this section, investigations are focused on the effect of imports on national security. This different approach follows recommendations by the US Department of Commerce (hereinafter, DOC) after an investigation initiated in January 2017 and concluded in January 2018. On 16 February 2018, US Secretary of Commerce Wilbur Ross released the report on *The Effect of Imports of Steel and Aluminium on the National Security, an Investigation Conducted under Section 232 of the Trade Expansion Act of 1962*. The report provides key findings with respect to both the steel and aluminium sectors, such as a decrease of employment in the steel and aluminium industries, the closure of furnaces and smelters, and the increased number of antidumping and countervailing duty orders. The report concludes that "*[t]he Department of Commerce found that the quantities and circumstances of steel and aluminium imports threaten to impair the national security*". While there is no definition of '*national security*' under Section 232, the DOC recognised two main elements in its interpretation under Section 232: 1) '*National defence*' (*i.e.*, defence of the US directly and the ability to project military capabilities globally), and 2) '*Critical industries*' (*i.e.*, the general security and welfare of certain industries, beyond those necessary to satisfy national defence requirements that are critical to the minimum operations of the economy and government). The report uses both these elements in reaching its conclusions, and determines that steel is essential for '*national defence*' and for critical US infrastructural needs, with unfair competition and increased imports putting them at risk. Similarly, the report states that an increase of aluminium imports was putting "*the domestic aluminium industry at risk of becoming unable to satisfy existing national security needs or respond to a national security emergency that requires a large increase in domestic production*".

Therefore, the DOC recommended the following actions to assist the steel sector: 1) A global tariff of at least 24% on all steel imports from all countries; or 2) A tariff of at least 53% on steel imports from 12 countries (*i.e.*, Brazil, China, Costa Rica, Egypt, India, Malaysia, South-Korea, Russia, South Africa, Thailand, Turkey and Vietnam) with a quota by product on steel imports from all other countries equal to 100% of their 2017 exports to the US; or 3) A quota on all steel products from all countries equal to 63% of each countries' 2017 exports to the US. With respect to the aluminium sector, the DOC recommended the following actions: 1) A tariff of at least 7.7% on all aluminium imports from all countries; or 2) A tariff of 23.6% on all products from five countries (*i.e.*, China Hong Kong, Russia, Venezuela and Vietnam) with a quota for the remaining countries; or 3) A quota on all imports from all countries equal to a maximum of 86.7% of their 2017 exports to the US.

On 8 March 2018, US President Trump signed two proclamations introducing new tariffs on steel and aluminium imports, while allowing US trading partners "*with a security relationship*" to apply for exemptions. More specifically, the US intends to impose a 25% import tariff on steel and a 10% import tariff on aluminium, which will enter into force within 15 days. A temporary exemption is again foreseen for Canada and Mexico, with whom the US is currently renegotiating the NAFTA.

Under WTO rules, a WTO Member is allowed to take '*safeguard measures*' (*i.e.*, actions against imports for the purpose of protecting a particular domestic industry) for the protection of domestic producers of particular products from serious threats or injury caused by such imports (in increased quantities) of '*like*' or competitive products. The '*safeguard measure*' must be in line with Article XIX of the GATT, as well as the WTO Agreement on Safeguards. The US appears, instead, to intend to base the proposed tariffs on steel and aluminium on Section 232 and on the effect of imports on '*national security*'. Under WTO rules, measures taken for '*national security*' reasons are expressly foreseen as an exception to the general rules under Article XXI of the GATT, which provides that "*Nothing in this Agreement shall be construed: a) to require any contracting party to furnish any information the disclosure of*

which it considers contrary to its essential security interests; or b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests; or c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security".

Should the US Administration proceed with this approach, the main question is whether the proposed tariffs can be justified under Article XXI of the GATT. The US would presumably base its arguments to defend its decision on Article XXI(b) of the GATT: "*to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests*". On 30 June 2017, the US argued, in a meeting of the WTO Goods Council, that the US Secretary of Commerce had initiated an investigation on steel and aluminium in light of the critical role these industries play for the US national security industrial base and the continued increase of steel and aluminium imports. However, it is noteworthy that only 3% of US-produced steel is actually used for the US defence industry. A lot of uncertainty surrounds the justification of trade measures on the basis of Article XXI of the GATT. Article XXI of the GATT was discussed by the GATT Council in 1985 in relation to the US trade embargo against Nicaragua and was assessed by the panel established to examine the US measure. However, the terms of reference of the panel stated that "*the Panel cannot examine or judge the validity or motivation for the invocation of Article XXI(b)(iii) by the US*" and the eventual report of the panel was never adopted. Article XXI might become relevant in two ongoing WTO dispute settlement proceedings (*i.e.*, *Russia-Ukraine - measures relating to trade in goods and services* and *Qatar-UAE - Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights*), but as of now, there is no previous case law on this particular provision.

On 9 March 2018, shortly after the US President signed the proclamations, the European Commissioner for Trade Cecilia Malmström stated that she still believed a solution could be found, but that the EU was prepared to propose WTO-compatible countermeasures against the US. Furthermore, Commissioner Malmström stated that the introduction of increased import tariffs on steel and aluminium would have a negative impact on transatlantic relations and on the global market. Finally, Commissioner Malmström pointed out that the EU would seek dispute settlement consultations with the US and in coordination with other trading partners. Commissioner Malmström is scheduled to meet US Trade Representative Lighthizer on 10 March 2018. The EU is one of the world's most important steel and aluminium producer, with Germany being the most important EU Member State in terms of steel and aluminium exports to the US. If the US were to apply the proposed tariffs, the EU would seek to apply its own safeguards or countermeasures in line with WTO rules, most likely based on Articles 6 and 8 of the WTO Agreement on Safeguards. Article 6 provides that "*in critical circumstances where delay would cause damage which would be difficult to repair, a Member may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injure*". The EU could invoke this article arguing the risk of trade deflation that the US measure would cause. Article 8 provides that an affected WTO Member may take retaliatory measures if the WTO Member taking the safeguard measures fails to offer adequate compensation. In a move to dissuade the US from pursuing the proposed import tariffs, the EU has already published a list of some of the US products that might be affected by potential retaliatory measures from the EU: certain steel products, beans, bourbon whiskey, rice, cranberries, orange juice, peanut butter and tobacco, as well as certain textile products.

The exception on '*national security*' and the related conditions contained in Article XXI of the GATT would likely be at the core of any WTO dispute with respect to the proposed US measures. Such a justification by the US could put a panel, and eventually the WTO Appellate Body, in a delicate position. Should the US really justify its tariffs with the exception on '*national security*' of Article XXI of the GATT, it is questionable whether such a measure could be qualified as a safeguard measure. The EU would seek to qualify the US measure as '*safeguard measure*' because there is no previous interpretation on measures under the

'*national security*' exception referred to in Article XXI of the GATT. Therefore, the outcome would depend on the interpretation by the panel determining whether or not a measure under the '*national security*' exception is considered a '*safeguard measure*', as well as, of course, whether the US measures can be justified in the first place under GATT Article XXI. Should that not be the case, the WTO Agreement on Safeguards and the rules relevant to countermeasures would not apply. In this case, any retaliation by the EU or other WTO Members could not be based on the rules of the WTO Agreement on Safeguards. On one side, the panel and the Appellate Body are expected to be sensitive and careful, in order to allow WTO Members to take measures under the '*national security*' exception. The '*national security*' exception is an important clause for the balance of the WTO system and a very restrictive interpretation would endanger its viability, as well as possibly further alienate a number of WTO Members vis-à-vis the '*rules of the game*' and the role of the institution. On the other side, it would clearly be necessary for the panel and the Appellate Body to provide clarification and interpretation in order to prevent WTO Members from abusing the '*national security*' exception for protectionist reasons when '*national security*' considerations are not the actual reason for a measure. A broad interpretation of Article XXI of the GATT risks to reduce the relevance of the WTO rules on safeguards and countermeasures. Another option for the US and in line with WTO rules would be for it to renegotiate with affected WTO Members the modification of its '*Schedules of concessions*' on steel and aluminium products, in accordance with Article XXVIII of the GATT. However, at this time, there is no indication that the US is considering to pursue this path, which would come at a considerable commercial cost.

The two proclamations signed by US President Trump will enter into force within 15 days. Reactions from important US trading partners, such as the EU, are clearly intended to dissuade the US from pursuing this dangerous and controversial path. If the controversy were to result in WTO dispute settlement proceedings, these would likely span over several years, thereby not providing any immediate relief for steel and aluminium exporters around the world. Additionally, there is also a clear risk that WTO proceedings might not be able to move forward once they reach the appeal stage, as the US has been blocking the procedure of appointing new judges to the WTO Appellate Body, or extending the term of the current judges. All relevant stakeholders should prepare for the expected decision on tariffs on steel and aluminium by the US, get involved now and engage with their respective interlocutors and governments to take the necessary measures. Importantly, considering the possible countermeasures and further affected sectors, the scope of these measures goes much beyond steel and aluminium and could affect many more industries. Hopefully, countries will exercise due restraint, follow WTO rules and avoid tipping the "*first dominoes*" of what could soon become a global war of '*tit for tat*' retributions, as the Director General of the WTO eloquently put it in his recent plea for WTO Members to avoid any further escalation.

Another step against '*palm oil-free*' labels – Members of the European Parliament call for a ban of certain misleading '*free from*' labels

On 1 March 2018, the European Parliament's Committee on Economic and Monetary Affairs (hereinafter, ECON) submitted its draft report for a European Parliament Resolution on the European Commission's (hereinafter, Commission) annual '*Report on competition policy*' to the European Parliament's plenary. In the context of the adoption of the report by the Committee, it reportedly rejected an amendment tabled by an Italian Member of the European Parliament (hereinafter, MEP) that aimed at obliging "*advertisers to declare or list only the characteristics of the ingredients actually present in the product and exclude those that are not contained therein unless the presence or absence of certain ingredients is related to congenital diseases*". While this report might not be the most pertinent choice to advance this issue, the struggle against anti-competitive, misleading and illegal '*free from*' claims and labels, such as '*palm oil-free*', has finally reached the European Parliament.

Every year, the Commission publishes a '*Report on Competition Policy*', which provides detailed information on the most important policy and legislative initiatives, and on decisions adopted by the Commission in the application of EU competition law during the previous year. The Commission report is composed of two documents: 1) A Communication from the Commission; and 2) The Commission Staff Working Paper, describing the developments in more detail. Typically, the European Parliament uses this opportunity to comment on the Commission report through a resolution. The European Parliament's ECON Committee is responsible for the preparation and consolidation of the resolution, in cooperation with further Committees of the European Parliament.

On 31 May 2017, the Commission had published the 2016 issue of the '*Report on Competition Policy*'. On 23 October 2017, the European Parliament's *Rapporteur* for the Resolution, Ramon Tremosa i Balcells, submitted his draft report to the ECON Committee. The report will form the basis for the Parliament's future resolution. On 28 November 2017, the *Rapporteur* published the amendments to the draft report. As Amendment 278, MEP Fulvio Martusciello of the Group of the European People's Party, submitted the following addition to the report: "*(protection of consumers against misleading or suggestive advertising) Calls on the Commission to oblige advertisers to declare or list only the characteristics of the ingredients actually present in the product and exclude those that are not contained therein unless the presence or absence of certain ingredients is related to congenital diseases*". On his website, MEP Martusciello noted that it was a joint initiative with MEP Alberto Cirio and published a joint statement. The two MEPs noted that the "*the events of recent years related to some food products have made it clear that the large retail chains now tend to promote products by advertising not the ingredients they contain, but those they do not contain*". MEPs Martusciello and Cirio consider this to be a "*very ambiguous practice that confuses the consumer and leads to deceptive purchases*". More specifically, the MEPs singled out '*free from*' labels, such as '*palm oil-free*' or '*GMO-free*', calling them "*deceptive*". As MEP Martusciello notes on his website, his proposed amendment appears to have been adopted with 28 votes for it, 22 against it, and 5 abstentions. Reportedly, however, the amendment appears to have been eventually rejected by the Committee, when it voted on the adoption of the draft report on 21 February 2018. The consolidated draft of the report has not yet been made publicly available. The European Parliament's plenary is scheduled to debate the report and vote on the Resolution on 16 April 2018.

Within the EU and beyond, there is an ongoing trend to label foodstuffs as '*free from*', which is understood by many consumers as implying that these products constitute a healthier choice. An increasing number of products is labelled and marketed with the '*salvation-promising*' word '*free*': '*lactose-free*', '*fructose-free*', '*gluten-free*', '*GMO-free*' and '*palm oil-free*'. While certain '*free-from*' claims are certainly beneficial for a range of consumers, such as those related to allergens or certain intolerances, others appear to be purely based on marketing priorities and campaigns. This has become a real trend in food marketing, suggesting that, as soon as something new appears, the food industry exploits it and helps spreading its supposed benefits, whether real or not. For a while, many food products were marketed as "*light*", these days, products are increasingly labelled with '*free-from*' claims. Food business operators and retailers are exploiting consumer's concerns and fears, which are often based on rumours circulated about certain products, substances and ingredients.

Indeed, consumers in the EU do appear to be receptive towards such '*free from*' claims and labels. A recent study, entitled '*European consumer healthiness evaluation of 'Free-from' labelled food products*', tested four different '*free-from*' labels, namely '*lactose-free*', '*gluten-free*', '*GMO-free*', and '*palm oil-free*', using different product categories on which these claims and labels typically appear. The study came to the conclusions that: 1) Products with a '*free-from*' label are considered healthier than products without such a label; and 2) The strongest effects occurred for '*GMO-free*' and '*palm oil-free*' labelling. Noteworthy is that the study also confirmed an increased consumer willingness to pay a price premium for '*free-from*' labelled products. The study showed that, in particular, French respondents were the most receptive to '*palm-oil free*' and '*GMO-free*' claims, and attributed this to French public debate and negative media coverage. Food labels are poised to influence and shape

consumers' food shopping behaviour. This change of behaviour must clearly be factored in when assessing the relevance and legality of certain '*free from*' claims.

'*Free-from*' or '*negative*' claims can be defined as claims indicating that certain ingredients, nutrients or substances are not present in a foodstuff. Legitimate uses of regulated negative claims in the EU, based on *Regulation (EC) No 1924/2006 on nutrition and health claims*, include some nutrition claims, such as '*sugar-free*', '*salt-free*', and '*saturated fat-free'*. Additionally, specific EU legislation exits for specific substances, such as *Commission Implementing Regulation (EU) No 828/2014 on the requirements for the provision of information to consumers on the absence or reduced presence of gluten in food* concerning '*gluten-free*' claims. Certain EU Member States, such as France and Germany, have legislated on '*GMO-free*' claims. Furthermore, a number of products on the EU market bear claims such as '*no additives*', '*no preservatives*' and '*no artificial colourings*'. Such so-called '*clean label*' claims may be made as long as they are true and the use of additives in such foods is legal.

Article 7(1)(c) of *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) on fair information practices, provides that food information must not be misleading, particularly "*by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics, in particular by specifically emphasising the presence or absence of certain ingredients and/or nutrients*". On the basis of Article 7(1)(c) of the FIR, voluntary information provided by food businesses on food products must not suggest that the food possesses special characteristics when, in fact, all similar foods possess such characteristics, in particular by specifically emphasising the presence or absence of certain ingredients and/or nutrients. This provision of the FIR addresses the legal concept of '*misleading advertisements with certainties*', which has so far been mostly applied in cases of so-called '*clean*' labelling.

A particular case concerns the issue of labelling products as '*palm oil-free*', the deceptive nature of which was also highlighted by MEPs Martusciello and Cirio. For a number of years, EU food business operators and retailers, particularly in Belgium, France, Italy and Spain, have been increasingly labelling a number of foodstuffs as '*palm oil-free*' and continue waging related marketing campaigns with a denigrating agenda. This trend continues despite the arguably clear illegality of such labels within the EU (see *Trade Perspectives*, Issue No. 4 of 20 February 2015). Indeed, within the EU and since 13 December 2014, the FIR provides that the specific vegetable oils must be indicated in the list of ingredients (see *Trade Perspectives*, Issue No. 23 of 12 December 2014). The mere listing of the generic indication '*vegetable oils*' is no longer sufficient. However, products claiming that they are '*palm oil-free*' and containing instead sunflower oil, rapeseed oil or any other vegetable oil, now mandatorily indicated in the list of ingredients, are still promoted as something '*special*'. Compared to similar foods that possess the same characteristics (*i.e.*, products containing sunflower oil or rapeseed oil, which is indicated by law in the labelling's ingredient list), but without a '*palm oil-free*' label, these '*palm oil-free*' labelled products are in no way '*special*'. Any consumer is able to read in the list of ingredients whether a product does or does not contain palm oil, which can no longer be '*hidden*' behind the generic term '*vegetable oils*'. Therefore, now that in the EU the specific origin of the vegetable oil used in any given foodstuff must be declared, '*palm-oil free*' claims are arguably obvious, unnecessary, irrelevant and illegal pursuant to Article 7(1)(c) of the FIR.

The illegality of '*palm oil-free*' claims and labels for other reasons has to be determined on a case-by-case basis. When made in a nutritional context, these '*palm oil-free*' claims on foodstuffs are arguably not approved and, therefore, illegal nutrition claims under *Regulation (EC) No 1924/2006*. Similarly, in case of accompanying further nutritional or environmental allegations, they often appear to be unsubstantiated misleading generalisations, and could be considered misleading pursuant to Article 7(1)(a) of the FIR.

In general terms, not all '*free-from*' claims and labels are misleading and some may be helpful for all or certain groups of consumers. MEP Martusciello did not call for an outright ban of all '*free-from*' labels, but rightfully included an exception in his amendment, calling for a ban on '*free-from*' claims "*unless the presence or absence of certain ingredients is related to congenital diseases*". The exception of "*ingredients related to congenital diseases*" may be too narrow, which might have contributed to the rejection of the amendment. At the same time, the increasing number of such claims and the apparent illegality of, for example, '*palm oil-free*' claims, continues to mislead consumers and distort their choices and competition. The consumer might consider to be purchasing something '*special*', '*better*' or '*healthier*', while this is not the case. The recent introduction of a '*palm oil-free*' trademark by the International Palm Oil Free Certification Accreditation Programme is poised to further aggravate this situation.

Despite the apparent setback through the rejection of the amendment supported by MEPs Martusciello and Cirio, the struggle against anti-competitive, misleading and illegal '*free-from*' claims and labels continues. The Commission and EU Member States' authorities must finally realise the damage that such claims and labels are responsible for, as recently underlined by the study on the effects of '*free from*' claims on consumers. A better enforcement of the existing rules or even the amendment of relevant EU legislation, such as the EU's Food Information Regulation, to make the ban of such claims more explicit, should be at the top of the agenda. Entire sectors, such as palm oil producers, are suffering under the illegal campaigns waged by some irresponsible EU food and retail businesses. All interested stakeholders should contribute to the debate on the issue and engage with the relevant interlocutors.

An EU report on the control of Internet marketed foods shows a large number of non-compliant novel foods and food supplements

On 26 February 2018, the European Commission (hereinafter, Commission) published the results of the first coordinated official controls of Internet marketed foods carried out by 25 EU Member States (all except Greece, Bulgaria and the UK), as well as by two of the Members of the European Free Trade Area (EFTA), Norway and Switzerland. EFTA Member States apply the same official control rules as EU Member States. During the month of September 2017, the competent national authorities of these countries checked nearly 1,100 websites for offers of non-authorised novel foods and food supplements. On those websites, the authorities found 779 offers for the sale of products that were clearly not complying with the relevant EU legislation, whether in terms of labelling and advertising, false claims or lack of authorisation.

According to point b) of Article 53 of *Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare* rules, the Commission may recommend coordinated control plans where they are considered necessary and on an *ad-hoc* basis, particularly with a view to establishing the prevalence of hazards in food, feed or animals. Coordinated control plans are a tool to better understand the extent of malpractices or fraudulent practices in a certain sector. They rely on harmonised sampling and methods of analysis to be implemented by all participating countries, for a limited period of time, so that the results can be properly evaluated. Between 2013 and 2016, the Commission already launched three control plans related to horsemeat, honey and fish substitution.

The first EU coordinated official controls on food products offered online were implemented according to a protocol adopted as *Commission Recommendation of 24 July 2017 on a coordinated control plan on the official control of certain foods marketed through the Internet* (hereinafter, Recommendation). The Recommendation acknowledges that the Internet offers and sales of food are increasing and that the Internet and digital technologies pose specific challenges to competent authorities confined to their jurisdictions and operating a system of

controls adapted to tangible sites. In 2015, a Commission report on a series of fact-finding missions regarding the controls on food supplements in EU Member States revealed that an increasing share of trade in food supplements is taking place via the Internet and that this trade is less transparent and more difficult to control. In the Recommendation, the Commission argues that, in order to address these challenges and to protect EU consumers from misleading practices that may result in the consumption of unsafe food, the official controls on Internet offers and sales needed to be strengthened, while the competent authorities needed to increase cooperation in order to ensure the proper application and enforcement of relevant EU rules for certain foods marketed via the Internet. Administrative assistance can comprise, *inter alia*, exchanges of information and documents, administrative enquiries and joint on-the-spot inspections. In November 2015, the Commission launched a dedicated IT tool for the handling of cases that require administrative assistance to be deployed, the Administrative Assistance and Cooperation (hereinafter, AAC) system. It is an important tool to maximise the efficiency of enforcement resources.

The objective of the coordinated official controls on food products offered online is to encourage EU Member States to identify and then control in a coordinated manner websites, which offer for sale specific types of products that are clearly not in compliance with EU food law. One focus of the coordinated control programme was on food supplements with medicinal claims (*i.e.*, claims that attribute to them the property of preventing, treating or curing diseases), since it is forbidden to place them on the EU market according to Article 7 of *Regulation (EU) No 1169/2011 on the provision of food information to consum*ers. Rapid alerts on food supplements under Article 50 of *Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law* have more than doubled since 2010. These alerts include, *inter alia*, food supplements sold via the Internet with misleading claims contrary to the rules on fair information practices laid down in Article 7 of *Regulation (EU) No 1169/2011*. These practices may lead to the consumption of unsafe food. The programme also focused on certain novel foods, which are not authorised in the EU and that have been the subject of many notifications to the EU's Rapid Alert System for Food and Feed (hereinafter, RASFF). The notifications are made because there are serious health concerns associated with these products. The number of RASFF notifications indicates the extent of the problem.

The coordinated control plan contained detailed instructions for the competent authorities. It was, for example, not required to perform test purchases (so-called '*mystery shopping*'). If participating authorities, however, decided to perform test purchases, they had to report observations to the Commission. The participation of EU Member States in the coordinated control plan was voluntary. To keep the workload for authorities at a reasonable level, a maximum number of websites with non-compliances to be notified was set. The Commission recommended that, if possible, authorities should perform the searches for websites from computers that were not part of the authorities' office networks. The legal basis for such anonymous online controls is provided by *Regulation (EU) 2017/625 of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products,* which already applies in part and which will repeal *Regulation (EC) No 882/2004* on 13 December 2019.

As regards food supplements advertised with medicinal claims, besides disease related expressions, the coordinated control plan gave examples of pictures or symbols that might be considered as medicinal claims if they are related to diseases. The food products in question were the following four novel foods, which are not authorised in the EU: 1) Agmatine (4-aminobutyl) guanidine sulfate; 2) Acacia rigidula; 3) Epimedium grandiflorum; and 4) Hoodia gordonii. Some of these novel foods are also falsely advertised as weight loss dietary supplements. In addition, the plant source of one of these novel foods (Hoodia gordonii) is protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and may only be imported into the EU if certain requirements are fulfilled. The presence of this plant in food supplements is one of the most commonly seized commodities that is infringing the CITES/EU wildlife trade rules.

EU and EFTA Member States' authorities checked about 1,100 websites for certain products, which are non-compliant with EU food legislation, namely four non-authorised novel foods and food supplements bearing medicinal claims. They found 779 offers for such products (made up of 428 offers of unauthorised novel foods and 351 food supplements with unauthorised/false medical claims), mostly from traders based in the country of the respective authority (482 offers), but also from traders located in other EU or EFTA Member States (142 offers) or third countries, namely the US and China (110 offers). Although this was not mandatory, in about 440 cases measures were taken with the aim to close the offer, including inspection of the traders' premises, warnings and, in some cases, fines. For non-compliant cross-border offers, administrative assistance was requested via the AAC IT system (154 cases) and, in case of health concerns, notifications were issued via the RASFF (139, of which 51 were notified to the US and China). The Commission considers the coordinated control action as a success.

This first EU coordinated official controls on food products offered online is a significant development since it primarily targets food supplements and novel foods marketed online, rather than sending inspectors to shops to look for illicit, non-compliant foods. The voluntary participation of nearly all EU Member States, plus Switzerland and Norway, clearly shows the high interest in this new task for control authorities. Likewise, the high number of notifications of non-compliant novel foods or food supplements bearing non-compliant claims underlines the interest and the capabilities of EU Member States' control authorities. Internet investigations require special hardware and software, besides highly expert staff, to enable official controls without being identified as a control authority. Since 2014, such capabilities are trained in the EU '*Better Training for Safer Food*' e-commerce control courses for EU Member States' control staff, which may have contributed to the success of the present plan. It can be concluded that the overall objectives of the plan, to encourage EU Member States to get more engaged in the control of the e-commerce food market, to cooperate more closely on non-compliant cross-border offers, and to use for this cooperation the available IT systems, have been reached.

The EU is taking official controls of foods seriously. This was the first time that the national authorities pooled their experience and resources, showing their preparedness to respond to the challenges of the online world and to protect consumers from unsafe and misleading products offered online. Of note is the new competence of control authorities to perform anonymous control measures and so-called '*mystery shopping*'. On the other hand, the high number of the non-compliant products and websites that were found is worrying. This may prompt the Commission to take a number of actions in order to strengthen controls further. These measures may include training of additional staff in online investigations, seeking cooperation with payment service providers, and establishing contact points for cooperation with major online platforms and market places. Further adjustments to legislation and electronic reporting systems are also planned. While consumers should be aware of the existence of an increasing number of non-compliant food products online, online retailers should pay attention to the increased enforcement by the competent domestic authorities and align their product portfolios. Further coordinated control plans are possible in all sectors where malpractices or fraudulent practices occur or are suspected.

Recently Adopted EU Legislation

Customs Law

- *Commission Implementing Regulation (EU) 2018/339 of 7 March 2018 amending and derogating from Regulation (EC) No 2535/2001 as regards the import licences for dairy products originating in Iceland*

- *Commission Implementing Regulation (EU) 2018/316 of 2 March 2018 fixing the import duties in the cereals sector applicable from 3 March 2018*

- *Commission Implementing Regulation (EU) 2018/310 of 1 March 2018 fixing the import duties in the cereals sector applicable from 2 March 2018*

Trade Remedies

- *Commission Implementing Regulation (EU) 2018/330 of 5 March 2018 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of stainless steel 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*

Food and Agricultural Law

- *Commission Implementing Regulation (EU) 2018/338 of 7 March 2018 concerning the authorisation of a preparation of 6-phytase, produced by Aspergillus niger (DSM 25770) as feed additive for chickens for fattening, chickens reared for laying, pigs for fattening, sows, minor porcine species for fattening or for reproduction, turkeys for fattening, turkeys reared for breeding, all other avian species (excluding laying birds) and weaned piglets (holder of the authorisation BASF SE)*

- *Commission Implementing Regulation (EU) 2018/327 of 5 March 2018 concerning the authorisation of a preparation of endo-1,4-beta-xylanase (EC 3.2.1.8) produced by Trichoderma citrinoviride Bisset (IMI SD135) as a feed additive for carp (holder of authorisation Huvepharma NV)*

- *Commission Implementing Regulation (EU) 2018/328 of 5 March 2018 concerning the authorisation of the preparation of Bacillus subtilis DSM 29784 as a feed additive for chickens for fattening and chickens reared for laying (holder of authorisation Adisseo France SAS)*

Other

- *Commission Implementing Regulation (EU) 2018/329 of 5 March 2018 designating a European Union Reference Centre for Animal Welfare*

- *Commission Implementing Decision (EU) 2018/322 of 2 March 2018 on suspending the examination procedure concerning obstacles to trade consisting of measures adopted by the Republic of Turkey affecting trade in uncoated wood free paper*

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