FRATINIVERGANO
EUROPEAN LAWYERS
TRADE PERSPECTIVES©

Issue No. 15 of 27 July 2018

The debate on WTO modernisation is gaining pace amidst a global '*trade war*' and a soon-to-be paralysed WTO Appellate Body

On 25 July 2018, US President Trump and the President of the European Commission (hereinafter, Commission) Jean-Claude Juncker held a meeting on trade-related issues in Washington, DC. Agreeing to a certain number of measures, both leaders also committed to "*work closely together with like-minded partners to reform the WTO and to address unfair trading practices*". Earlier this month, on 5 July 2018, the Commission had submitted a background document detailing the Commission's proposals on WTO modernisation to the EU Member States. The document addresses the issues of: 1) WTO regular work and transparency; 2) Rulemaking in the WTO; and 3) WTO Dispute Settlement. The proposals and the related debate come at a time of increased tension in the global trading system. The '*trade war*', initiated by US President Trump with the recently imposed tariffs on steel and aluminium, as well as the vacancies in the World Trade Organization's (hereinafter, WTO) Appellate Body that remain unfilled, are currently shaking up the global trade environment. A serious debate on WTO reform is overdue and perhaps the current tensions within the global trading system provide the appropriate incentives to finally move it ahead.

At the end of June 2018, the European Council provided the Commission with a mandate on WTO modernisation. Paragraph 16 of the Council conclusions of 28 June 2018 state that "*In a context of growing trade tensions, the European Council underlines the importance of preserving and deepening the rules-based multilateral system. The EU is committed to working towards its modernisation and calls on all partners to contribute positively to this goal*". The Council then provided the Commission with the specific task of pursuing the reform of the WTO. The Council stated that "*It invites the Commission to propose a comprehensive approach to improving, together with like-minded partners, the functioning of the WTO in crucial areas such as (i) more flexible negotiations, (ii) new rules that address current challenges, including in the field of industrial subsidies, intellectual property and forced technology transfers, (iii) reduction of trade costs, (iv) a new approach to development, (v) more effective and transparent dispute settlement, including the Appellate Body, with a view to ensuring a level playing field, and (vi) strengthening the WTO as an institution, including in its transparency and surveillance function*".

The document prepared by the Commission concerns three main areas: 1) WTO regular work and transparency; 2) Rulemaking in the WTO; and 3) WTO Dispute Settlement. First, the Commission details its approach to the regular WTO work, referring to the work undertaken in the WTO's councils and committees. The Commission discusses three aspects of the regular WTO work: 1) Transparency; 2) Dealing with specific trade concerns

(hereinafter, STCs); and 3) Incrementally adjusting the WTO rules. With regard to transparency, the EU intends to make the committee-level monitoring more effective and interactive by, *inter alia*, improving compliance with transparency obligations, sanctions for non-compliance, counter-notifications and strengthening the role of the WTO Secretariat by allowing it to take charge of more substantive assessments instead of organisational matters alone. With regards to STCs, the EU notes that the current process leads to repetitive committee meetings in which "*speaking points get recycled*". The proposals state that WTO Members should be required to provide substantive replies within specific timeframes for STCs and for improving cross-committee coordination. Finally, with respect to the WTO rules, the EU advocates for "*incrementally adjusting the WTO rulebook*", meaning that WTO council and committees should, independently of the overall negotiations, adjust and clarify the WTO rules, advancing them if necessary. Indeed, Article 12 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and Article 13 of the WTO Agreement on Technical Barriers to Trade (TBT Agreement) already provide, as a function of the committees under the respective agreement, "*the furtherance of its objectives*". At the very end, the EU notes that the issues for incremental change should reflect the interests of stakeholders and gain traction among WTO Members. Considering the difficulties of overall progress in WTO negotiations, it is rather optimistic to assume that WTO Members could agree on the suggested working-level reforms and incremental changes. However, limited and pragmatic changes to committee procedures might realistically be achieved.

Secondly, the EU outlines its proposals on WTO rulemaking, noting that the WTO's negotiating function has been largely blocked and is effectively paralysed. Since the WTO Ministerial Conference in Doha in 2001, WTO Members have been negotiating under the Doha Development Agenda (hereinafter, DDA). Negotiations collapsed in 2008 and have made little progress ever since. This lack of progress is also attributed to the traditional WTO negotiating principle of the '*single undertaking*', referring to the approach that virtually every item of the negotiation is part of a whole and indivisible package and cannot be agreed separately (*i.e.*, "*nothing is agreed until everything is agreed*"). A number of WTO Members tried numerous times to change course, negotiate beyond the Doha round issues and advance certain issues – not with all WTO Members, but in smaller groups, leading to plurilateral agreements. Earlier this year, the US Administration outlined its trade policy priorities for the year 2018 in the President's Trade Policy Agenda of the US Administration and clearly stated that "*the Trump Administration will not negotiate off the basis of the DDA mandates or old DDA texts and considers the Doha Round a thing of the past*". The US Administration then detailed two key aspects, namely a more plurilateral approach and a revised approach to designating '*developing country*' status, for which no WTO criteria currently exist.

The Commission now follows suit, presenting its own proposals for future WTO negotiations, also with the clear focus of allowing plurilateral negotiations to advance issues "*that are key to global trade as it evolves*" and to establish a new approach with regards to development and developing countries. In terms of the areas of negotiation, the EU highlights three areas of particular concern: 1) Subsidies and State-Owned Enterprises (SOEs); 2) New rules to address barriers to services and investment, including in the field of forced technology transfer and digital trade; and 3) Better addressing the sustainability objectives of the global community, as agreed in the UN's Sustainable Development Goals. The EU's proposals on reforming the WTO's approach to development objectives are rather detailed and specific, clearly taking up concerns raised by the US. Finally, the EU provides some details on the new format of WTO negotiations, referring to the concept of "*flexible multilateralism*", where WTO Members interested in a certain issue would be able to negotiate on the issue on the condition that the agreed benefits are then made available on a most-favoured nation's (MFN) basis. In addition to this "*flexible multilateralism*", WTO Members should continue multilateral and plurilateral negotiations. Finally, the EU calls for the strengthening of the WTO Secretariat. Until now, WTO Members have been reluctant to change course and move away from the consensus-based approach to negotiations. It remains to be seen if the current situation can actually facilitate the reform efforts.

Thirdly, an urgent area of reform, or at least of agreed common understanding, concerns the WTO Dispute Settlement Body, more specifically the WTO's Appellate Body. In the President's Trade Policy Agenda, the US Administration detailed five US concerns with respect to the WTO dispute settlement mechanism, relating to delays in the issuance of appeal decisions, continued service by members of the Appellate Body whose terms have ended, decisions going beyond the issues necessary to decide the appeal, and its approach to reviewing facts, as well as the Appellate Body's claim that its reports be treated as precedence. As a consequence of the alleged shortcomings, the US has been blocking the selection process of new members of the Appellate Body to replace those whose term has ended. Technically, the Appellate Body is composed of seven members. Currently, it only has four members, with the term of another member ending on 30 September 2018. According to Article 8(5) of the WTO Dispute Settlement Understanding (DSU), Appellate Body panels shall be composed of three members.

According to Article 8(3) of the WTO DSU, "*Citizens of Members whose governments are parties to the dispute or third parties […] shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise*". Considering that the three remaining judges are of Chinese, Indian and US nationality, and that the majority of cases typically involve one of those three countries, the Appellate Body will be effectively paralysed from October of this year. In December 2019, the terms of two additional members will end, paralysing the Appellate Body for cases between any WTO Members. The EU proposals provide detailed considerations on the issues put forward by the US Administration. In terms of the process, the EU focuses on addressing the main issues in order to allow new members to join the Appellate Body. Once those issues are addressed and the functioning of the Appellate Body is guaranteed, WTO Members should review some of the substantive concerns raised by the US concerning the interpretation of WTO law. This is clearly the most pressing issue and should be addressed with urgency. Unless a short-term solution is found, the Appellate Body will soon be effectively paralysed. The successful functioning of the WTO's dispute settlement system has been one of the cornerstones of the global trading system.

As a result of the meeting between US President Trump and the President of the European Commission, Jean-Claude Juncker, an '*executive working group*' is to be set up, which is tasked to "*identify short-term measures to facilitate commercial exchanges and identify tariff and non-tariff measures*". More specifically, US President Trump stated that the group would discuss issues related to "*unfair trading practices, including intellectual property theft, forced technology transfer, industrial subsidies, distortions created by state-owned enterprises, and overcapacity*". Reportedly, the working group would be open to other, like-minded partners. Previously, the Commission had stated that any negotiation with the US, that were to involve mutual concessions on trade, would require a formal mandate from EU Member States. At the very least, a more constructive dialogue than had been held over the past several months has now been initiated. The EU and the US must now deliver, which would ultimately benefit the entire international trading system.

The EU's proposals were addressed to the EU's Trade Policy Committee and will likely be subject to Committee discussions in the coming months. The path forward, however, remains unpredictable. Clear proposals are important to drive this process forward and progress must be achieved well before the next WTO Ministerial Conference to be held at the end of 2019.

Calls for better food labelling enforcement and stronger rules in the EU

In a letter of 16 June 2018 to national ministers in the EU Member States, the European Commissioner for Health and Food Safety, Vytenis Andriukaitis, called for tougher enforcement actions on food labelling. In the letter, Andriukaitis said that national EU governments should "*strengthen their national enforcement activities on the labelling practices followed by food businesses*". The letter was sent in response to a report from the

European Consumer Organisation (hereinafter, BEUC), calling for increased regulation and arguing that food manufacturers use "*grey areas*" in EU legislation to "*sugar coat*" the true characteristics of their products: "*From fruit drinks which contain only a couple of drops of the fruit pictured on the package to '*traditional*' foods which are heavily processed, the true nature of some products is sugar-coated on the label*".

In a recent report of 14 June 2018, titled "*Food Labels: Tricks of the Trade - Our recipe for honest labels in the EU*", BEUC set out recommendations for EU institutions to "*make food labels more honest*". BEUC calls for tighter regulation, emphasising three widespread misleading labelling practices across the EU in the food sector: 1) Quality: Attractive descriptions or images (*e.g.*, '*traditional*', '*artisanal*'), which convey an impression of quality that bear little or no relation to the production process of the food/drink; 2) Fruits: Pictures of fruit being used to market foods with little or no fruit content and selective promotion of expensive fruits on the front of pack with low actual content; and 3) Labelling as '*whole grain*': Products with hardly any actual whole grain content. Stating that the result of consumer confusion and misleading advertising practices may be the result of the lack of EU guidelines in this area of food products' advertising and labelling, BEUC is calling for clearer rules for the labelling of food and drink products, as well as for their effective enforcement, to avoid deceiving consumers as to the true nature of the food and drink they purchase. In particular, the EU should: 1) Define the key terms commonly used on labels to market quality aspects of foods and beverages to consumers, such as '*traditional*', '*artisanal*' or '*natural*'; 2) Set minimum content rules for products, which highlight certain ingredients such as fruits on the front of the pack; and require that the percentage of advertised ingredients be clearly displayed on the label (*e.g.*, the percentage of fruit in any product, which highlights them on the front of pack); and 3) Establish an EU legal definition that sets minimum levels of whole grain content for '*whole grain*' claims. BEUC's Director General, Ms. Monique Goyens, reportedly concluded that manufacturers have been taking advantage of grey zones in the EU law to make their products look like they are of better quality or healthier than they actually are.

In his letter to EU Member States, Commissioner Andriukaitis called on national governments to "*strengthen their national enforcement activities on the labelling practices followed by food businesses*". He wrote that the provision of food information should pursue a high level of protection of consumers' health and interests, by providing the basis for final consumers to make informed choices and to make safe use of food, with particular regard to health, economic, environmental, social and ethical considerations. Mr. Andriukaitis stressed that the existing legal framework in the EU provides a number of food laws designed to prevent food makers and distributors from misleading consumers through labelling or advertising. In particular, he referred to *Regulation (EU) No 1169/2011 on the provision of food information to consumers* (hereinafter, FIR). He noted that the FIR specifically demands clear communication, when it states that "*Food information shall not be misleading, particularly as to the character of food and in particular as to its nature, identity, properties, composition, quality, durability, country of origin or place of provenance, method of manufacture or production. (…) Food information shall be accurate, clear and easy to understand for the consumer*". He added that, under the FIR, voluntary food information must not be displayed to the detriment of the space available for mandatory food information, which must be marked in a conspicuous place in such a way as to be easily visible, clearly legible and, where appropriate, indelible. It shall not in any way be hidden, obscured, detracted from or interrupted by any other written or pictorial matter, or any other intervening material. Moreover, the Commissioner said that the Court of Justice of the EU had also ruled that, even when food information was provided in accordance with EU legislation, this may be insufficient if an "*erroneous or misleading*" impression is given to the consumer through packaging or labelling. This final point is a reference to the *Teekanne* Case C-195/14 (see *Trade Perspectives*, Issue No. 12 of 15 June 2015).

In response to BEUC's call for tighter rules, Mr. Andriukaitis merely noted in his letter to national ministers that the Commission was considering and analysing further BEUC's call to modify EU rules. However, he added that "*misleading labelling practices would merit further*

attention in your national control activities". EU Member States are, in fact, responsible for enforcing food law, monitoring and verifying that the relevant requirements of food law are fulfilled by food business operators at all stages of production, packaging and distribution. Commissioner Andriukaitis emphasised that, during the last two years, his services had conducted audit missions in several EU Member States in order to evaluate the official control systems in place governing food information to consumers. While the results had shown, in general, that EU Member States carry out comprehensive controls on food information to consumers, BEUC's report shows that misleading labelling practices would merit further attention in EU Member States' national control activities. But are better rules needed at the EU level? A brief look at the three examples given by BEUC shows that the issues are extremely complex.

First, defining terms commonly used on labels to market quality aspects, such as '*traditional*', '*artisanal*' or '*natural*' would arguably not only entail a definition referring to ingredients, but also to manufacturing processes. Currently, EU legislation provides for the use of the term '*natural*' in two cases: Natural mineral waters are defined in *Directive 2009/54/EC on the exploitation and marketing of natural mineral waters* and *Regulation (EC) No 1334/2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods,* which lays down the condition for the use of the description '*natural*' for flavourings. For other foods and beverages, a definition of '*natural*' has not yet been established, besides the general rule that the labelling, advertising and presentation of food shall not mislead consumers. Some EU Member States, including the UK, issued guidance documents for the use of the claim '*natural*' (*e.g.*, the UK's *Criteria for the use of the terms fresh, pure, natural, etc. in food labelling*, revised in July 2008) to help manufacturers decide when these descriptions may be used.

Second, regarding the setting of minimum content rules for products that highlight certain ingredients, such as fruits on the front of the pack (and requiring that the percentage of advertised ingredients is clearly displayed on the label), there is already a rule in Article 22(1)b) of the FIR on the quantitative indication of ingredients (QUID): "*The indication of the quantity of an ingredient or category of ingredients used in the manufacture or preparation of a food shall be required where the ingredient or category of ingredients concerned is emphasised on the labelling in words, pictures or graphics*". The indication of the QUID must be done in the list of ingredients, which according to BEUC is not prominent enough. Here, the possible argument that consumers may not look at the lists of ingredients, that are printed in small font, is arguably not pertinent, since, according to Article 13(2) of the FIR, mandatory particulars (such as the list of ingredients) must be printed on the package or on the label in such a way as to ensure clear legibility (*i.e.*, larger than it was usually done before). In the *Teekanne* case, the CJEU held that, even if the list of ingredients is correct (an ingredient highlighted on images, but not actually present, was not listed), the packaging or labelling could give an "*erroneous or misleading*" impression to the consumer that the ingredient is present.

As regards the third point raised by BEUC, establishing a legal definition that sets minimum levels of whole grain content for '*whole grain*' claims, it must be noted that minimum levels have been established *in Regulation (EC) No 1924/2006 on nutrition and health claims made on foods* for certain nutrients, minerals and vitamins, like '*source of fibre*', '*high fibre*', '*source of protein*', '*high protein*', '*source of [name of vitamin/s' and/or [name of mineral/s]*' or '*high [name of vitamin/s] and/or [name of mineral/s]*'. Establishing minimum content claims for specific ingredients, such as '*whole grains*', appears overly restrictive, considering that such claims, when the product barely contains grains, should be able to be challenged as misleading under the existing rules.

There are other matters of misleading advertising of food products, not mentioned in the BEUC report, where the existing rules of the FIR are often not properly enforced, for example the case of labelling with certainties or self-evident labelling. Claims such as '*additives-free*' or '*free-from preservatives*' (commonly known as '*clean labels*') may be made as long as they are true and the use of additives in such foods is legal. *Regulation (EC) No. 1333/2008*

on food additives indicates the specific additives that are permitted in the specific categories of food. For fresh fruit, *inter alia*, only a very limited number of additives is permissible. If the use of additives for a category of foodstuffs is not permitted, the '*additives-free*' claim suggests that the foodstuff possesses special characteristics when, in fact, all similar foodstuffs possess such characteristics. Such advertisement, based on self-evident product information, is misleading.

The same arguably applies to '*palm oil-free*' or '*no palm oil*' claims, which are to be considered as misleading under the FIR. Most recently, in July 2018, *Idilia Foods*, the producer of *Nocilla*, which is the leading chocolate spread in Spain, launched a new recipe replacing, reportedly for nutritional reasons, palm oil with sunflower oil and cocoa butter. From now on, all *Nocilla* jars carry a green '*palm oil-free*' ('*sin aceite de palma*' in Spanish) claim. Since 13 December 2014, the specific vegetable oil used in any food product must be specified in the list of ingredients. Therefore, '*palm oil-free*' or '*no palm oil*' claims, indicating that products do not contain palm oil, are now arguably obvious, '*self-evident*' and '*flagrantly misleading*' according to Article 7(1)(c) of the FIR, because such products are not '*special*' compared to similar ones that also do not contain palm oil, but which do not carry '*palm oil-free*' labels (see *Trade Perspectives*, Issue No. 4 of 20 February 2015). Furthermore, such allegations, when made in a nutritional and/or environmental context, appear to be unsubstantiated misleading generalisations because palm oil consumption is not *per se* unhealthy and not all palm oil production is unsustainable. '*Palm oil-free*' campaigns appear to be, at best, deceptive or unsubstantiated generalisations and, at worst, fraudulent in nature and aimed at denigrating competing oils and/or promoting certain products by implying that whatever is used as an alternative ingredient is better, healthier or environmentally greener than what is not used (see *Trade Perspectives*, Issue No. 10 of 16 May 2014 and Issue No. 23 of 12 December 2014).

There are numerous occasions where there is lack of enforcement of existing food information law in the EU. However, no new EU level rules might be needed if EU Member States' actually enforced the existing rules. Perhaps the call of Commissioner Andriukaitis that "*misleading labelling practices would merit further attention in your national control activities*" is heard. Still, the Commission could perhaps better assist EU Member States in their tasks by issuing some authoritative guidance with examples from the CJEU and national courts on what is considered to be misleading food information under the FIR and what is not. Such guidance would also help food business operators on knowing the limits between correct and misleading advertising.

WHO report on non-communicable diseases calls for actions to reduce salt intake, including labels on food high in fats, sodium, and sugars

On 1 June 2018, the World Health Organization's (hereinafter, WHO) Independent High-Level Commission on Non-Communicable Diseases (hereinafter, NCDs) published its report '*Time to deliver*' (hereinafter, the Report). The Report lists a series of recommendations and is intended to advise the WHO Director-General, but is also addressed at Heads of State and Government, policy makers across government sectors, as well as other stakeholders. In its recommendations, aimed at reducing human mortality rates associated to NCDs, the Report calls on governments and national institutions to reduce citizens' salt and sugar intake, as a step towards a healthier diet. Unhealthy diets are one of four main risk factors for NCDs. By way of mere example, representatives of the Italian food industry already expressed their concerns regarding some of the Report's recommendations, in particular the implementation of '*front-of-pack*' (hereinafter, FoP) labelling and the "*reformulation of food products to contain less salt*".

NCDs are considered a medical condition or disease that is not caused by infectious agents. They tend to last for long periods of time and are the result of a combination of genetic, physiological, environmental and behavioural factors. There are four main types of NCDs

identified by the WHO: 1) Cardiovascular diseases; 2) Cancers; 3) Chronic respiratory diseases; and 4) Diabetes. The recommendations listed in the Report by the WHO's Independent High-Level Commission on NCDs aim at intensifying political action to prevent and decrease premature deaths from NCDs. The Report states that NCDs are preventable through public policies, which should address four main risk factors: 1) Tobacco use; 2) Harmful use of alcohol; 3) Unhealthy diets; and 4) Physical inactivity. According to the Report, unhealthy diets are one of the main risk factors, for which Governments must accept primary responsibility for taking action to create the appropriate environment and to promote the reduction of food high in fats, sodium, and sugars (HFSS food). Sodium is a component of various chemical compounds, such as salt (*i.e.*, sodium chloride). On 25 September 2015, Members of the United Nations (hereinafter, UN) had agreed on the Sustainable Development Goals (hereinafter, SDG), which also include a specific health goal. Finally, UN Members also committed to act on nutrition and unhealthy diets through the '*UN Decade of Action on Nutrition*' from 2016 to 2025, which includes actions to reduce the consumption of fats, sodium, and sugars.

With respect to risk factor 4 concerning unhealthy diets, the Report lists four recommendations related to the reduction of human salt intake: 1) "*Reduce salt intake through the reformulation of food products to contain less salt and the setting of target levels for the amount of salt in foods and meals*"; 2) "*Reduce salt intake through the establishment of a supportive environment in public institutions such as hospitals, schools, workplaces and nursing homes, to enable lower sodium options to be provided*"; 3) "*Reduce salt intake through a behaviour change communication and mass media campaign*"; and 4) "*Reduce salt intake through the implementation of front-of-pack labelling*". The Report recognises that for the reformulation of food products and the implementation of FoP labelling, regulatory capacity along with multisectoral actions, involving relevant ministries and civil society, is needed. The recommendations are intended to build on previous commitments in areas where further action is needed. The objective of these recommendations is to reduce and prevent deaths due to NCDs by implementing a variety of "*cost-effective, affordable and, evidence-based interventions*". Furthermore, improved access to healthy foods should be provided and the availability of unhealthy foods should be reduced. At the World Health Assembly in May 2017, WHO Members endorsed a number of policy options.

The WHO's Report is only intended to present recommendations and advice to the WHO Director-General. The Report's recommendations are not mandatory and do not bind WHO Members, such as Italy. On 27 September 2018, the UN will hold the *Third United Nations High-level Meeting on NCDs*, "*which will undertake a comprehensive review of the global and national progress achieved in putting measures in place that protect people from dying too young from heart and lung diseases, cancers and diabetes*".

The Report's recommendations do not constitute a completely new approach. Certain countries have already taken measures to reduce the intake of salt and sugar intake with the purpose of reducing obesity or improving their citizens' nutrition. In 2015, the Chilean Government passed *Decree No. 13 of 16 April 2015* (hereinafter, Decree 13/2015) amending *Decree 977/1996,* the Food Health Regulation (*i.e.*, *Reglamento sanitario de los alimentos*). *Decree 13/2015* requires warning messages in the shape of a black octagon in the form of a STOP sign to be placed on the FoP with the text '*High in*…', when food products exceed certain levels of energy, sodium, sugars or saturated fats. Chile's measure aimed at tackling lifestyle risks by conveying certain information to the public (see *Trade Perspectives*, Issue No. 16 of 11 September 2015). Another example is the French FoP labelling scheme. In April 2017, the French Ministry of Social Affairs and Health notified to the Commission the five-colour '*Nutri-Score*' nutrition label, which France recommended to food business operators in order to promote healthier food choices (see *Trade Perspectives*, Issue No. 9 of 5 May 2017).

Although the Report does not address any particular product and does not recommend actions against any particular products, it has already lead to a debate in Italy about potential effects on traditional Italian specialities. Italy's Minister for Agriculture, Food and Forestry

Policies stated that he could not "*imagine that our products like Grana Padano, parmesan, Parma ham or oil could be considered the same way as chemical products*" and claimed that the Report placed Italian products under attack. The President of the Italian Agricultural Federation *Copagri*, Mr. Franco Verrascina, stated that the language used in the Report could cause significant damage to the image of Italy's national food industry. A main concern among Italian stakeholders is the recommendation to implement FoP labelling similarly to how cigarette packages carry health warnings and along the lines of how certain food products are already being labelled in Chile. According to Italian stakeholders, these measures could apply to some of Italy's main delicacies, such as parmesan cheese, Parma ham and olive oil. The Italian Federation of the Food Industry (*i.e.*, *Federalimentare*) stated that the Report represented "*a structural attack*" on Italian brands. Obviously, Italian products would not be the only products possibly affected, if measures were to be taken at the EU or EU Member States' level. Products such as French cheeses, *Jamón Ibérico* (Spanish ham) and Greek olives could be affected as well.

FoP labelling has become increasingly relevant for regulators and industries alike. Although there are countries that have implemented this kind of labelling (*e.g.*, Chile, France, and also the UK), the implementation of such labels is always a topic of concern. One of the main issues regarding FoP nutrition labelling is the lack of global consistency, despite high-level WHO recommendations. In October 2017, the *Codex Alimentarius* Committee on Food Labelling noted that there was a need for international guidelines on best practices for FoP labelling, which would provide clear and transparent scientific guidance to governments. It also noted that new work on FoP labelling would help in harmonising FoP labelling and should provide a definition for FoP labelling and fundamental principles for monitoring and assessing the effectiveness of such schemes. Such definition should be scientifically substantiated, voluntary, and exclusively applicable to processed foods (possibly with a number of exceptions). Furthermore, FoP labelling should provide consumers with accurate and transparent nutrition information to help them to make informed decisions (see *Trade Perspectives*, Issue No. 20 of 3 November 2017). The Committee agreed to start developing guidelines on FoP labelling schemes, and to submit the project document for approval to the *Codex Alimentarius* Commission.

The WHO Report only makes recommendations. However, the adoption of such recommendations could have a significant impact on the food industry, for instance as certain FoP nutrition labels could damage the reputation of a product when categorising it as *de facto* unhealthy. With the global trend of FoP labelling schemes, it is very important that a certain degree of consistency be maintained (or achieved) in order to ensure that: 1) Consumers are not misled; 2) Such labelling systems do not distort or restrict trade, particularly in protectionist fashion; and 3) It does not distort competition. Stakeholders in the agri-food sector should monitor developments on FoP nutrition labelling and take action to ensure that their legitimate interests are voiced and represented within all relevant *fora*. In addition, given the unique situation of the EU Single Market, uniform legislation regarding FoP nutrition labelling should be adopted at the EU level, as piecemeal legislation across EU Member States would almost certainly have a negative impact on the free movement of goods within the Single Market.

Recently Adopted EU Legislation

Customs Law

- *Decision No 2/2018 of the EU-Ukraine Association Committee in Trade Configuration of 14 May 2018 on recalculating the schedule of export duty elimination and safeguard measures for export duties set set out in Annexes I-C and I-D to Chapter 1 of Title IV of the Association Agreement*

- *Commission Implementing Regulation (EU) 2018/1013 of 17 July 2018 imposing provisional safeguard measures with regard to imports of certain steel products*

Trade Remedies

- *Commission Implementing Decision (EU) 2018/1037 of 20 July 2018 terminating the anti-dumping proceeding concerning imports of low carbon ferro-chrome originating in the People's Republic of China, Russian Federation and Turkey*

- *Commission Implementing Regulation (EU) 2018/1017 of 18 July 2018 amending Implementing Regulations (EU) 2017/366 and (EU) 2017/367 imposing definitive countervailing and anti-dumping 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 and Implementing Regulations (EU) 2016/184 and (EU) 2016/185 extending the definitive countervailing and 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 to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not*

- *Commission Implementing Regulation (EU) 2018/1012 of 17 July 2018 imposing a provisional anti-dumping duty on imports of electric bicycles originating in the People's Republic of China and amending Implementing Regulation (EU) 2018/671*

Food and Agricultural Law

- *Commission Implementing Regulation (EU) 2018/1043 of 24 July 2018 concerning the non-renewal of approval of the active substance fenamidone, 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 Commission Implementing Regulation (EU) No 540/2011*

- *Commission Implementing Regulation (EU) 2018/1039 of 23 July 2018 concerning the authorisation of Copper(II) diacetate monohydrate, Copper(II) carbonate dihydroxy monohydrate, Copper(II) chloride dihydrate, Copper(II) oxide, Copper(II) sulphate pentahydrate, Copper(II) chelate of amino acids hydrate, Copper(II) chelate of protein hydrolysates, Copper(II) chelate of glycine hydrate (solid) and Copper(II) chelate of glycine hydrate (liquid) as feed additives for all animal species and amending Regulations (EC) No 1334/2003, (EC) No 479/2006 and (EU) No 349/2010 and Implementing Regulations (EU) No 269/2012, (EU) No 1230/2014 and (EU) 2016/2261*

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