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Moving forward with reforming the WTO – the debate intensifies and the EU, Japan and the US co-sponsor specific initial reform steps

On 25 September 2018, Ambassador Robert E. Lighthizer, United States Trade Representative, Ms. Cecilia Malmström, European Commissioner for Trade, and Mr. Hiroshige Seko, Minister of Economy, Trade and Industry of Japan met in New York and agreed to co-sponsor first steps in the context of proposals to reform the World Trade Organization (hereinafter, WTO). Shortly before, on 18 September 2018, the European Commission (hereinafter, Commission) published its *Concept paper* on WTO modernisation, which was presented on 20 September 2018 in Geneva. In preparation of that meeting, Canada had also prepared a discussion paper. With the next WTO Ministerial Conference still 1.5 years away, WTO Members currently focus on initiating broader debate and improving working procedures.

It is a time of increased tension within the global trading system, largely due to the ongoing '*trade war*' initiated by the additional tariffs imposed by the US, as well as the problem of vacancies in the WTO Appellate Body that are not being filled. Additionally, the WTO's negotiating function has been largely blocked. 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 made little progress ever since. This lack of progress is largely attributed to the traditional WTO negotiating principle of the '*single undertaking*', referring to the approach that virtually every item of the negotiations is part of a whole and indivisible package and cannot be agreed separately. Certain WTO Members tried numerous times to change course, negotiate beyond the Doha Round issues and advance certain topics – not with all WTO Members, but in smaller groups, leading to plurilateral agreements. However, agreement on a refined approach has not been reached. Considering these serious concerns, WTO Members are now intensifying debate on how to reform the WTO on a broad range of issues, from changes to working procedures within the WTO permanent committees to changes to the overall rulemaking.

At the end of June 2018, the European Council provided the Commission with a mandate on WTO modernisation and invited it *"to propose a comprehensive approach to improving, together with like-minded partners, the functioning of the WTO in crucial areas*". On 5 July 2018, the Commission submitted its proposals on WTO modernisation to the Council of the EU and, on 18 September 2018, the Commission officially published its *Concept paper on WTO modernisation*. The EU's *Concept paper* concerns three main areas: 1) WTO regular work and transparency; 2) Rulemaking in the WTO; and 3) WTO Dispute Settlement (for a

detailed review of the EU proposals, see *Trade Perspectives*, Issue No. 15 of 27 July 2018). Along similar lines, Canada also prepared a discussion paper on '*Strengthening and Modernizing the WTO*' and, on 20 September 2018, hosted an event on WTO modernisation in Geneva.

With regards to transparency, Canada and the EU intend 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 the strengthening of the role of the WTO Secretariat by allowing it to take charge of more substantive assessments instead of organisational matters alone. With regards to Specific Trade Concerns (hereinafter, STCs), the EU notes that the current process leads to repetitive committee meetings and 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 the WTO councils and committees should, independently of the overall negotiations, adjust and clarify the WTO rules, advancing them if necessary. The EU notes that the issues for incremental change should reflect the interests of stakeholders and gain traction among WTO Members. Canada proposes to improve the capacities and opportunities for deliberation on thematic issues to foster multilateral dialogue on trade. While it might be rather optimistic to assume that WTO Members could agree on the suggested working-level reforms and incremental changes, some limited and pragmatic changes to the current committee procedures might realistically be achieved.

Secondly, Canada and the EU outline their respective proposals on WTO rulemaking. The proposals come after the US Administration had, earlier this year, clearly stated that it would "*not negotiate off the basis of the DDA mandates or old DDA texts and considers the Doha Round a thing of the past*" and called for a more plurilateral approach and a revised approach to designating '*developing country*' status, for which no WTO criteria currently exist. Canada's and the Commission's proposals also have a clear focus on allowing "*alternative approaches to cooperation*" and 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. Canada highlights a number of potential issues as well, noting: 1) Outstanding issues from previous negotiations (*e.g.*, tariff escalation, agricultural support, and development issues); 2) Modernising the rules for the modern economy (*e.g.*, digital trade, sustainable development, and inclusive trade); and 3) Addressing concerns about distortion of competitive conditions (*e.g.*, SOEs, industrial subsidies, and transfer of technology and trade secrets). Canada and the EU then also provide some details on new possible formats of WTO negotiations. The EU refers 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. Canada also supports "*open agreements*" that extend benefits on an MFN basis and plurilateral agreements outside of the WTO. Finally, Canada underlines the need to address the developmental dimension, calling for a new approach to reconcile the conflicting interests in reciprocity and flexibility.

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 had 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 is blocking the selection process of new members of the Appellate Body to replace those whose term has ended. This situation might soon effectively paralyse this important WTO body (for a detailed assessment of this issue, see *Trade Perspectives*, Issue No. 15 of 27 July 2018). 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. Canada's *Discussion paper* also provides a number of general, as well as specific, proposals to improve the WTO dispute settlement system. The proposals range from, *inter alia*, making the dispute settlement procedures more flexible and adaptable, to accommodating the different nature of disputes, a commitment to self-restraint and openness to mediation by WTO Members, the discussion by WTO Members on "*authoritative interpretation*" of the WTO rules, and the introduction of minority opinions by dissenting panellists. Rendering the WTO Appellate Body fully functional again is clearly the most pressing issue and should be addressed with urgency. The successful functioning of the WTO's dispute settlement system is one of the cornerstones of the global trading system and should be safeguarded.

The relevance of this issue is confirmed by the outcome of a meeting, on 25 September 2018, between the Trade Ministers of the EU, Japan, and the US. Among other topics, the ministers discussed common efforts on WTO reform. According to the Joint Statement, the "*Ministers shared a common view on the need for the reform of the WTO, and, with respect to its monitoring and surveillance function, agreed as a first step to co-sponsor a transparency and notification proposal for consideration at the next meeting of the WTO Council on Trade in Goods*". Furthermore, in line with the EU's proposal, the Ministers agreed to "*promote the strengthening of the regular committee's activities and instructed their experts to discuss the development of a potential joint proposal by the three members focusing on the promotion of best practices and increasing efficiencies across committees*". With respect to the issue of the definition of '*development status*', the Ministers noted that "*broad classifications of development, combined with self-designation of development status*" prevented the WTO from negotiating new agreements and undermined their effectiveness. In this regard, the Ministers called on advanced WTO Members claiming developing country status to undertake full commitments in ongoing and future WTO negotiations.

In parallel to the political discussions, non-governmental stakeholders are defining their priorities concerning WTO modernisation. The European Services Forum (hereinafter, ESF) has been one of the first trade associations to establish its position on the reform proposal currently being discussed, directly addressing the areas outlined by the EU and Canada. In large part, the ESF supports the modernisation proposals, highlighting issues relevant for businesses and the services sector. In particular, the ESF is clearly supportive of a plurilateral approach, which has already been applied in the services negotiations since 2005. In this regard, the ESF points out that, under WTO rules, only full multilateral agreements adopted by all WTO Members may be subject to WTO dispute settlement and that, as a pragmatic solution, existing plurilateral agreements, such as the Agreement on Government Procurement (GPA), had to be granted a waiver, agreed by all WTO Members. Further actors will and should likely follow-up with their respective positions and further contribute to the debate on WTO modernisation.

The next date on the itinerary of the WTO reform debate will be a meeting hosted by Canada at the end of this month. Canada invited like-minded WTO Members (*i.e.*, Australia, Brazil, Chile, the European Union, Japan, Kenya, Mexico, New Zealand, Norway, Singapore, South Korea and Switzerland) to a meeting in Ottawa on 24 and 25 October 2018 aimed at acting "*as a catalyst for action, for concrete proposals*". Despite the ongoing global '*trade war*' and the next WTO Ministerial Conference only taking place in June 2020, debate on WTO reform, aimed at both improving working level procedures, as well as the political decision making, is finally intensifying. The initiatives and proposals are important developments and might incite further debate, but there is still a long way to go to involve all the 164 WTO Members, and, in

particular, to receive the support from developing countries. At this early moment of the debate, relevant stakeholders should define their priorities and positions and ensure that their perspectives and interests are taken into account.

Entering the final stretch of '*Brexit*' negotiations: The need to prepare for all possible outcomes increases within the EU and around the world

On 17 October 2018, leaders of the 27 EU Member States, without the UK, will meet within the European Council to discuss the impending '*Brexit*'. On the following day, an EU Summit with the participation of the UK will take place. Publicly, despite important outstanding issues, both sides continue to state that they still aim at agreeing on a withdrawal agreement at this venue. So far, however, no compromise appears to be within reach. On 5 October 2018, EU ambassadors are scheduled to discuss the EU's offer on the future relationship with the UK and the European Commission (hereinafter, Commission) is expected to publish its proposal during the week of 8 October. In the meanwhile, the EU continues to prepare for the possibility that no agreement on the terms of the withdrawal be reached. With the terms of the impending '*Brexit*' still largely unclear, the only option for businesses and trading partners in the EU and around the world is to prepare for all possible outcomes, with the agri-food sector remaining one of the most critical sectors, for instance with respect to meat products, such as poultry, and geographical indications.

On 29 March 2017, the UK Government had officially notified the EU of its intention to withdraw from the EU and, in its '*Brexit*' Bill, the UK formally committed to leave the EU at 23:00 GMT on 29 March 2019. '*Brexit*' negotiations take place since June 2017, but a number of key issues still need to be resolved before negotiations on the overall withdrawal agreement can conclude. Since the beginning of 2018, negotiations also focus on the questions of a transition period and the future relationship between the EU and the UK. While, on 23 March 2018, the EU confirmed the agreement on a transition period from 29 March 2019 until 31 December 2020 (see *Trade Perspectives*, Issue No. 7 of 6 April 2018), negotiations on the future relationship and a number of key issues, in particular related to the border between the UK and Ireland, continue. On 12 July 2018, the Government of the UK published its *White Paper* on '*The future relationship between the United Kingdom and the European Union*' (see *Trade Perspectives*, Issue No. 14 of 13 July 2018) and, in early October, the EU is expected to publish its revised approach to the future relationship.

Since the beginning of the '*Brexit*' negotiations, the agri-food sector has been one of the most outspoken sectors with respect to the lack of certainty regarding the terms of '*Brexit*' and the future relationship between the EU and the UK. Indeed, the existing supply chains and trade flows for agricultural goods and food products, within the EU, but also with respect to imports from and export to third countries, suggest a significant challenge for farmers and food businesses in the UK, in Ireland, across the EU and around the world (see *Trade Perspectives*, Issue No. 6 of 24 March 2017, Issue No. 10 of 19 May 2017, Issue No. 4 of 23 February 2018 and Issue No. 12 of 15 June 2018). Issues of relevance range from market access issues (*i.e.*, tariffs, tariff-rate quotas, and non-tariff barriers), to plant protection, to food safety and food and quality labelling.

With respect to specific market access concerns, a key issue is the allocation of tariff-rate quotas (hereinafter, TRQs) currently granted by the EU to third countries. An important sector in this regard will be the meat sector, particularly with respect to beef and poultry. For poultry, the EU currently grants important TRQs to third countries. A number of TRQs for poultry are in place for Ukraine. With Brazil and Thailand, the EU had reached, back in 2012, agreements on trade in poultry providing for significant TRQs for a variety of poultry products. The agreement came after the landmark WTO case *EC – Chicken Cuts*, and after initial agreements between the EU and Brazil and the EU and Thailand, respectively, delivered no long term solution. The EU then renegotiated its WTO Schedule of Concessions with Brazil and Thailand. This resulted, *inter alia*, in annual EU import quotas for 15,800

metric of Brazil-made processed chicken meat products subject to duties of EUR 630 per metric tonne, and 62,905 metric tonnes at a tariff rate of 10.9% by value, and 29,600 metric tonnes of Thailand-made processed chicken meat products. In related WTO dispute settlement proceedings launched by China in 2015, in the case of *EU – Poultry Meat (China)*, the panel found that, for certain TRQs, the EU would have needed to take China's substantial supplying interest into account because China's increased ability to export poultry products to the EU following the relaxation of EU SPS measures in July 2008 constituted a "*special factor*". In 2017, the EU informed the WTO that it intended to implement the panel's recommendations, but it appears that, so far, no action was taken. In the first half of 2018, Thailand has become the EU's primary source of poultry imports, surpassing Brazil, which had a considerable lead in previous years. Between January and July 2018, the EU imported a total of 457,404 metric tonnes of poultry: 178,179 metric tonnes from Thailand, 154,428 metric tonnes from Brazil, 75,531 metric tonnes from Ukraine, and the remaining quantities from China and from other origins. Therefore, the reallocation of the poultry TRQs in the context of '*Brexit*' will be of particular interest to Brazil, China, Thailand and Ukraine.

With respect to '*Brexit*', two steps must be distinguished. Firstly, the EU and the UK will have to agree with WTO Member States on the division of any EU 28 TRQs for agricultural goods, and, secondly, the EU and the UK will then have to decide on their respective post-'*Brexit*' TRQs. In October 2017, the EU and the UK sent a letter to all Permanent Representatives to the WTO and informed other WTO Members of how they would deal with the consequences of '*Brexit*' for the multilateral trading system of the WTO. Most importantly, they noted that the EU's scheduled commitments for goods, services and public procurement would remain applicable to its territory, but that the EU's existing quantitative commitments in the area of goods, namely through TRQs, would require certain adjustments to reflect '*Brexit*'. With respect to the quantitative commitments in the form of TRQs, the future quotas are supposed to be established through an apportionment of the EU's existing commitments and based on current trade flows under each TRQ. Even before this letter was sent, the Permanent Representatives of seven important EU trading partners (*i.e.*, Argentina, Brazil, Canada, New Zealand, Thailand, the US, and Uruguay) sent a letter to the EU and the UK, voicing their concerns over the considered apportionment of the current TRQs. Concerns, in particular, reportedly relate to TRQs for meat products and reflect the current situation of the EU Single Market, where an EU's TRQ applies to all 28 Member States and where a product exported to a specific EU Member State can still be seamlessly moved onwards to another EU Member State. Such seamless onward trade would not exist anymore between the EU and the UK, should the UK leave the EU Single Market and the Customs Union, as envisaged.

Since then, the EU is conducting negotiations with third countries under Article XXVIII of the GATT to modify the EU's Schedule where it contains TRQ volumes. However, given the short time frame, it is not certain that all these negotiations would be concluded before the UK is no longer covered under the EU's Schedule. The Commission considered it therefore necessary to ensure that, in the absence of such agreements, the EU would be able to proceed with the apportionment of the tariff rate quotas by modifying its WTO tariff concessions and that the Commission be provided with the necessary powers to consequently amend the relevant EU provisions on the opening and implementation of the relevant tariff rate quotas. In May 2018, the Commission submitted a *Proposal for a Regulation of the European Parliament and of the Council on the apportionment of tariff rate quotas included in the WTO schedule of the Union following the withdrawal of the United Kingdom from the Union and amending Council Regulation (EC) No 32/2000*. The proposal lists how TRQs figuring in the EU's WTO Schedule of Concessions would be apportioned between the EU and the UK. It also provides the Commission with the power to modify this apportionment by delegated acts should it become necessary following the later concluded agreements with third countries. On 27 September 2018, the Commission's proposal was discussed in the European Parliament's Committee on International Trade (INTA), which published a draft report proposing certain amendments. The INTA Committee is scheduled to vote on the report on 5 November 2018, it will then be submitted for a vote by the plenary, and, once adopted, will become the Parliament's position in the forthcoming '*trilogue*' negotiations with the Commission and the Council.

Once agreement has been reached on the apportionment of the TRQs and once the UK has left the EU, the UK can then then decide on its own TRQs. In this context, it may decide to make an allocation among supplying countries, typically based on a '*previous representative period*'. However, the special circumstances of '*Brexit*' will add some complexity to the process, as the UK might not be able to base its determinations exclusively on a '*previous representative period*', because during any such period, the UK will have been a member of the EU Customs Union and the EU Single Market. Should the EU seek to benefit from such TRQs, the EU could, arguably, put forth that the UK's membership in the EU was a '*special factor*' that affected trade in the product and that it should be considered as a principal or substantial supplier to the UK for certain products. Third countries trading with the EU28 and with the UK should also decide how to engage in these negotiations and what strategy to pursue. While some countries will be able to swiftly negotiate preferential trade agreements (*e.g.*, FTAs, CEPAs, etc.) with the UK post-*Brexit*, others may not, but their TRQs should nevertheless be reaffirmed and protected.

Another outstanding issue that has recently received attention in the context of '*Brexit*' negotiations is the issue of geographical indications (hereinafter, GIs). GIs aim at supporting regional specialities, while at the same time enhancing and safeguarding their reputation. *Regulation (EU) No. 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs* designates two types of GIs: 1) Protected Designations of Origin (PDO), which apply to foodstuffs that are produced, processed and prepared in a given geographical area using recognised 'know-how'; and 2) Protected Geographical Indications (PGI), which indicate a link with the area in at least one of the stages of production, processing or preparation. The legal concept of GIs aims at providing legal protection against the imitations and usurpations of food and agricultural products. The protection through GIs focuses on preventing the misuse of names, which could mislead consumers as to the origin of agricultural products and their quality or characteristics, which provide added culinary and economic value.

In the EU, including the UK, the protection of GIs has a cultural and an economic importance. Currently, there are 86 GI-protected UK food and drink products. The UK's *White Paper* on the future relationship between the UK and the EU provides that the UK would *"be establishing its own GI scheme after exit, consistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS)*". Furthermore, the new UK framework would provide "*a clear and simple set of rules on GIs, and continuous protection for UK GIs in the UK*", such as for Scotch whisky, Scottish farmed salmon, and Welsh beef and lamb and that the "*scheme will be open to new applications, from both UK and non-UK applicants, from the day it enters into force*". Following the publication of the *White Paper*, GIs became one of the main discussion points during recent '*Brexit*' negotiations in August 2018. In particular, the EU is concerned that the approach suggested in the *White Paper* would not guarantee the automatic recognition of existing EU GIs, but that existing EU GIs would have to go through another application process in the UK. Reportedly, the UK is using the issue of GIs as a way to achieve concessions by the EU in other areas, such as migration and market access. However, if the UK and the EU were not to reach an agreement of a mutual recognition on GIs, GI-protected UK products would also be put at risk. Negotiations on this issue continue and the UK is expected to provide a more detailed plan on its envisaged legislation to protect GIs. The EU's Chief Negotiator for '*Brexit*', Michel Barnier, stated that GIs remained part of the 20% of the Withdrawal Agreement that had not been settled yet. UK producers of GI-protected products (*e.g.*, Stilton cheese) are as worried as the EU, referring to copyright issues and to the importance of exports to other EU Member States.

With only around six months left until the UK is supposed to leave the EU, time is quickly running out for EU and UK negotiators, as well as for businesses and trading partners in the UK, within the EU and around the world. As the terms of '*Brexit*' may not be clear until later this year, businesses will need to start preparing for all possible outcomes on all issues. At the same time, the definition of the future trade relationship with the EU and negotiations with third countries on the reallocation of important TRQs, as well as on future bilateral trade

agreements, must be well prepared. Interested stakeholders should determine their positions now, so as to be able to contribute their perspective and ensure that their interests are taken into account by the EU, the UK and third country governments.

Discussions on emerging food safety risks and risk communication in the EU

There is a need for early identification of emerging food safety issues in order to prevent them from developing into actual health risks. Communicating about such emerging risks that have and will have a high impact on the agri-food activity can be challenging, as these risks are often associated with significant levels of uncertainty and ambiguity. On 18 April 2018, the European Commission (hereinafter, Commission) published a proposal to amend *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, establishing the European Food Safety Authority and laying down procedures in matters of food safety* (hereinafter, the General Food Law or GFL), particularly its provisions on risk communication, which is currently being debated within the European Parliament. This article addresses the regulatory side and discussions in the EU on emerging food safety issues.

The impetus for the GFL originated from a succession of food related crises, notably the *Bovine Spongiform Encephalopathy* (BSE), foot and mouth disease and dioxin crises in the late 1990s and early 2000s. At least BSE resulting from animal feed with meat and bone meal was at that time an '*emerging*' risk. These crises put public health at great risk and the resulting market support measures and trade disruption involved huge costs. They also seriously undermined public confidence in the EU food safety regulatory framework. The political response was the adoption of a *White Paper on Food Safety* in January 2000. This paved the way for a complete overhaul of the regulatory framework, with the focus on the GFL in 2002. The separation of risk assessment and risk management, with the newly created *European Food Safety Authority* (hereinafter, EFSA) responsible for risk assessment, was the single biggest innovation in the GFL.

Despite these origins, there is no statutory definition of '*emerging food safety risk*' in the EU. The GFL notes, in its recital 50, that improved identification of emerging risks may, in the long term, be a major preventive instrument at the disposal of EU Member States and the EU in the exercise of its policies. It was therefore necessary to assign to the EFSA an anticipatory task of collecting information, exercising vigilance and providing evaluation of and information on emerging risks with a view to their prevention. The EFSA itself defines an emerging risk as: "*A risk resulting from a newly identified hazard to which a significant exposure may occur, or from an unexpected new or increased significant exposure and/or susceptibility to a known hazard*". Article 23(f) of the GFL defines as one of EFSA's tasks "*to undertake action to identify and characterise emerging risks, in the fields within its mission*". Article 34 of the GFL addresses the identification of emerging risks. EFSA is required to establish monitoring procedures for systematically searching for, collecting, collating and analysing information and data with a view to the identification of emerging risks in the fields within its mission. Where the EFSA has information leading it to suspect that an emerging serious risk exists, it must request additional information from EU Member States, other EU agencies and the Commission. The EU Member States, the EU agencies concerned and the Commission must reply as a matter of urgency and forward any relevant information in their possession. The EFSA must use all the information it receives in the performance of its mission to identify an emerging risk and forward the evaluation and information collected on emerging risks to the European Parliament, the Commission and the EU Member States.

The successful and early identification of emerging risks is at the heart of protecting public health and the environment. By identifying emerging risks in the food chain early, the EFSA supports risk managers in anticipating risks and taking effective and timely prevention measures to protect consumers. Identifying emerging risks also helps to improve EFSA's ability to meet future risk assessment challenges. In 2010, the EFSA established an *Emerging Risks Exchange Network* (hereinafter, EREN) to exchange information between

the EFSA and the EU Member States on possible emerging risks for food and feed safety. The EREN is composed of delegates from EU Member States and Norway designated through the EFSA's *Advisory Forum* and observers from the Commission, EU candidate countries, the US *Food and Drug Administration* (FDA) and the *Food and Agricultural Organization* (FAO) of the United Nations. The potential emerging issues discussed within the EREN are mainly microbiological and chemical hazards, but also food safety issues as result of illegal activity, new consumer consumption trends, biotoxins, new technologies and processes, allergens, animal health, environmental pollution, new analytical methods, new food packaging technology, and unknown hazards figure on its agenda. Based on the available evidence, the EREN recommends whether an issue should be considered '*emerging*' or not, and if it merited further consideration, such as generating data on the issue, starting a full risk assessment and/or consultation of other bodies. According to the emerging risks identification process set in place at the EFSA, the issues discussed and found of relevance by the EREN are sent to the EFSA's *Scientific Committee's Standing Working Group on Emerging Risks* for final evaluation. In 2014, the EFSA presented and discussed the method developed to preliminary assess signals of potential emerging issues, exemplified with case studies (*e.g.*, zoonotic aspects of illegally imported wildlife products and benefits and risks of 3D food printing).

Further to the EREN, emerging issues are discussed in the EFSA's *Stakeholders Consultative Group on Emerging Risks* (hereinafter, StaDG-ER), composed of representatives of the food industry, the Commission and EFSA). In 2016, emerging risks, for which new consumer trends were the predominant associated driver, included: potential risks associated to uses of seaweed; risks associated with the use of green tea extracts in food supplements; antimicrobial resistance in fish and seafood imports; increase in notified Enterohemorrhagic Escherichia coli (EHEC) human cases; recycled electric and electronic plastics; pyrrolizidine alkaloids (PAH) in different types of teas; risks associated with the use of diosmin and hesperidin; piperine as ingredient in food supplements; adulterated food supplements on sale via internet; Echinococcus multilocularis eggs on fruits, vegetables and mushrooms; risks associated with the use of aloe in food; and antimicrobials in honeybees. A wide array of emerging issues was also discussed in the StaDG-ER and in the EREN in 2017, including: food defence and bioterrorism (adequacy of the EU regulatory framework); potential risk related with high level/content of nutrients in fortified foods; nanoemulsions in the food sector; possible epidemic of wheat stem rust and yellow rust; foodsharing (food collection points); Shiga toxin-producing E. coli O121 in flour; and increase of human infections with azol-resistant Aspergillus spp. presumably driven by agricultural practices. Communicating about such emerging risks can be challenging, as these risks are often associated with significant levels of uncertainty and ambiguity.

In the Commission's *Regulatory Fitness and Performance programme* (REFIT), risk communication under the GFL was found not to be effective enough. Evidence has pointed to occasional divergences and, in very few occasions, conflicting communications amongst EU and national risk assessors and risk managers, which may have an adverse impact on public perception as regards the assessment and management of risk related to the agri-food chain. Divergences between EU and national risk assessors, however, do not necessarily put in question the work of the different scientific bodies. These can be explained by a variety of factors, including: the legal framework to which the question refers, the type of question put to scientific bodies by the relevant risk managers and how these are framed, whether the assessment relates to a hazard or a risk, the methodologies followed, or the data, which are utilised.

Regarding the greater commitment to issues related to risk analysis, on 12 April 2018, the Commission published a *Proposal for a Regulation of the European Parliament and of the Council on the transparency and sustainability of the EU risk assessment in the food chain* (hereinafter, proposal), *amending Regulation (EC) No 178/2002 [on general food law], Directive 2001/18/EC [on the deliberate release into the environment of GMOs], Regulation (EC) No 1829/2003 [on GM food and feed], Regulation (EC) No 1831/2003 [on feed additives], Regulation (EC) No 2065/2003 [on smoke flavourings], Regulation (EC) No*

1935/2004 [on food contact materials], Regulation (EC) No 1331/2008 [on the common authorisation procedure for food additives, food enzymes and food flavourings], *Regulation (EC) No 1107/2009* [on plant protection products] and *Regulation (EU) No 2015/2283* [on novel foods]. With the proposal, the Commission hopes to improve various aspects directly related to risk analysis and, therefore, also to emerging risks in the agri-food sector. The most relevant aspects of the proposal focus on the following: 1) It would ensure that scientists and citizens have access to key safety related information being assessed by the EFSA at an early stage of the risk assessment (except for duly justified confidential information); 2) It would contribute to improve citizens' confidence in the credibility of scientific studies and consequently confidence in the EU risk assessment system. The proposal provides for a series of measures to ensure that the EFSA has access to the broadest relevant scientific evidence possible related to a request for authorisation and to increase the guarantees of reliability, objectivity and independence of studies used by the EFSA in its risk assessment. 3) Better involving EU Members States in the EFSA's governance structure and Scientific Panels and thus supporting the sustainability in the long-term of the EFSA's risk assessment without touching on its independence. 4) Strengthen risk communication between the Commission, the EFSA, EU Members States and the public. It is proposed to lay down objectives of risk communication in a new Article 8a and general principles of risk communication in a new Article 8b of the GFL, taking into account the respective roles of risk assessors and managers and, based on these objectives and general principles, to draw up a general plan on risk communication in a new Article 8c. Such general plan should identify the key factors that need to be taken into account when considering the type and level of communication activities needed, ascertain the tools and channels for the relevant risk communication initiatives. Finally, the proposal would empower the Commission to draw up this general plan for the purposes of the GFL by means of delegated acts.

In April 2018, the EFSA published a survey on consumer perceptions of emerging risks in the food chain, where it asked Europeans for their views on emerging risks, and how they would like to be informed about them. The EFSA surveyed over 6,200 consumers in 25 EU Member States, asking them about potential emerging risks related to food safety. The survey used three examples of emerging risks: green smoothies, plastic rice, and nanotechnologies. Overall, respondents were more concerned about risks that are already known to scientists than about emerging risks. However, the survey findings have important implications for communicating about new risks. Consumers expressed a desire to be informed about emerging risks early on in the process of identification, even if there is scientific uncertainty. They also indicated a preference for receiving such information via traditional media channels such as television and newspapers, and the websites of national authorities. Social media and the websites of European authorities were also popular channels among 18 to 34-year-olds. These consumer insights will help the EFSA and its partners in national food safety authorities to develop communications strategies and materials on emerging issues.

Emerging agri-food risks and the applicable legal framework are connected, not only due to the fact that, in case of an emerging risk developing into an actual risk, there would be a series of regulatory measures to deal with the risks, but also with respect to the proposed revision of the applicable rules, when addressing the modification of the GFL to enhance elements linked to risk analysis. On 18 July 2018, the *Rapporteur* of the European Parliament's *Committee on the Environment, Public Health and Food Safety* (ENVI), released a draft report on the proposal to amend the GFL. On 21 September 2018, the ENVI Committee tabled a draft report, including numerous amendments to the Commission's proposal, including on the proposed new provisions on risk communication. After the Committee will have voted on the report, it will go to the plenary of the European Parliament. Food business stakeholders with an interest in the matters of emerging risks and risk communication should monitor developments and work with their legal advisors and be prepared to participate in shaping upcoming legislation amending the GFL by interacting with the relevant EU institutions, trade associations and other affected parties to have their views and interests duly voiced and considered.

Recently Adopted EU Legislation

Customs Law

- *Commission Implementing Regulation (EU) 2018/1300 of 27 September 2018 amending and derogating from Regulation (EC) No 2535/2001 as regards import licences for dairy products originating in Norway*

- *Notice concerning the entry into force of the Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Norway concerning additional trade preferences in agricultural products*

Trade Remedies

- *Commission Implementing Regulation (EU) 2018/1468 of 1 October 2018 amending Council Implementing Regulation (EU) No 461/2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India*

- *Commission Implementing Regulation (EU) 2018/1469 of 1 October 2018 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine, 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) 2018/1293 of 26 September 2018 amending Implementing Regulation (EU) 2017/2470 as regards the conditions of use of the novel food lactitol*

Other

- *Council Decision (EU) 2018/1464 of 28 September 2018 on the position to be adopted on behalf of the European Union in the CETA Committee on Trade and Sustainable Development, established by the Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part, as regards the establishment of lists of individuals willing to serve as panellists under Chapter Twenty-Three and Chapter Twenty-Four of the Agreement*

- *Commission Regulation (EU) 2018/1480 of 4 October 2018 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures and correcting Commission Regulation (EU) 2017/776*

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