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Earnest trade negotiations ahead? The EU and the US present their negotiating directives and objectives for further trade negotiations

On 11 January 2019, the Office of the United States Trade Representative (hereinafter, USTR) published its *Summary of Specific Negotiating Objectives* regarding the trade negotiations with the EU. Shortly thereafter, on 18 January 2019, the European Commission (hereinafter, Commission) submitted two recommendations for negotiating directives to the Council of the EU (hereinafter, Council), for the EU's trade negotiations with the US: 1) A *Recommendation for a Council Decision authorising the opening of negotiations of an agreement with the United States of America on conformity assessment*; and 2) A *Recommendation for a Council Decision authorising the opening of negotiations of an agreement with the United States of America on the elimination of tariffs for industrial goods*. Already at a first glance, a certain number of discrepancies between the objectives of the two sides can be identified, in particular regarding their scope. At the same time, the compliance of the approach by the EU and the US with international trade rules remains questionable. In any case, continuing the dialogue and conducting trade negotiations in earnest can be considered an important improvement *vis-à-vis* the exchange of tariffs/countermeasures and threats/counter-threats in 2018.

On 8 March 2018, US President Donald Trump had exercised his authority under Section 232 of the US *Trade Expansion Act of 1962* and announced the imposition of an additional 25% tariff on steel imports and an additional 10% tariff on aluminium imports, allegedly in order to protect US national security (see *Trade Perspectives*, Issue No. 5 of 9 March 2018). This led to the introduction of countermeasures by various affected trading partners and, later in 2018, to an important number of requests for consultations under the World Trade Organization's (hereinafter, WTO) Dispute Settlement Understanding (see *Trade Perspectives*, Issue No. 20 of 2 November 2018). In view of the US Administration's threats to similarly impose additional tariffs on car imports from the EU, US President Trump and the President of the Commission Jean-Claude Juncker, on 25 July 2018, held a meeting in Washington, DC and agreed to a number of initiatives (see *Trade Perspectives*, Issue No. 15 of 27 July 2018). During the meeting, the EU and the US decided to set up an *Executive Working Group* to take the agenda forward. Both sides agreed in a joint statement that, while the work of the *Executive Working Group* was ongoing, they would not go against the spirit of the agreement reached, unless either party were to terminate the negotiations.

In particular, Presidents Juncker and Trump agreed to the following specific initiatives: 1) To work together towards zero tariffs, zero non-tariff barriers, and zero subsidies on non-auto

industrial goods; and to work to reduce barriers and increase trade in services, chemicals, pharmaceuticals, medical products, as well as soybeans; 2) To strengthen EU-US strategic cooperation with respect to energy. Notably, the EU agreed to import more liquefied natural gas (LNG) from the US in order to diversify its energy supply; 3) To launch a close dialogue on standards in order to ease trade, reduce bureaucratic obstacles, and reduce costs; and 4) To join forces to better protect US and EU companies from unfair global trade practices by working closely, together with like-minded partners, to reform the WTO and to address unfair trading practices. In the Autumn of 2018, various meetings of the *Executive Working Group* were held, and the publication of the draft negotiating directives and objectives now follow up on two aspects agreed at the July 2018 meeting, namely to work towards zero tariffs and zero non-tariff barriers on non-auto industrial goods.

On 11 January 2019, the USTR published its *Summary of Specific Negotiating Objectives* with respect to the intended trade negotiations with the EU. The summary is broad and provides negotiating objectives in 24 areas, concerning, *inter alia*, trade in goods, rules of origin, sanitary and phytosanitary measures (hereinafter, SPS), technical barriers to trade (hereinafter, TBT), and also areas such as dispute settlement, intellectual property, and investment. In simple terms, these are the objectives for a comprehensive trade agreement, similar to the envisaged Transatlantic Trade and Investment Partnership (hereinafter, TTIP), whose negotiations were suspended when the Trump Administration took office, although negotiations had been subject to widespread public concerns and protests since the beginning. According to the negotiating objectives, the US intends to reduce both tariff and non-tariff barriers, and to achieve fairer and more balanced trade with the EU. With respect to industrial goods, the negotiating objectives aim at securing comprehensive duty-free market access (including for textile and apparel products) for the US and at strengthening disciplines to address non-tariff barriers that constrain US exports. The US also intends to expand EU market access for remanufactured goods and greater regulatory compatibility to facilitate US exports. Notably, with respect to tariffs reductions, the USTR's negotiating objectives are not limited to industrial goods, but also refer to agricultural goods. More specifically, with regards to agricultural goods, the US intends to secure comprehensive EU market access for US agricultural goods by reducing or eliminating tariffs, to provide reasonable adjustment periods for US import-sensitive agricultural products, to eliminate practices that unfairly decrease US market access opportunities or distort agricultural markets to the detriment of the US, to promote better regulatory compatibility by reducing unnecessary burdens associated with existing differences in regulation and standards, and to include specific commitments for trade in products developed through agricultural biotechnologies.

It appears that the US negotiation objectives are much broader than the scope of negotiations currently envisaged by the EU. In fact, a few days after the USTR published its *Summary of Specific Negotiating Objectives,* the Commission submitted, on 18 January 2019, two recommendations for negotiating directives to the Council, one on the issue of conformity assessment and a second one on the elimination of tariffs for industrial goods. These proposals build more accurately on the joint statement by Presidents Juncker and Trump in July 2018 and the discussions between European Commissioner for Trade Cecilia Malmström and USTR Robert Lighthizer at the meetings of the *Executive Working Group*. The recommendation on the negotiating directives concerning '*conformity assessment*' (*i.e.*, the testing, inspection and/or the certification of a product) aims at removing non-tariff barriers. More specifically, it aims at reducing the costs for conformity assessments for economic operators in the EU and the US by agreeing on the acceptance of the results of conformity assessments carried out by assessments bodies in the territory of the exporting party in accordance with the technical requirements of the importing party. This would greatly facilitate the process for businesses to prove that their products meet the relevant technical requirements on both sides of the Atlantic and, thereby, reduce costs and save time. The second recommendation by the Commission to the Council concerns the '*elimination of tariffs for industrial goods*'. It aims at the elimination of tariffs only for industrial goods, notably excluding the area of agricultural products, which had proven a very sensitive issue in the context of previous EU-US TTIP negotiations. However, particularly noteworthy is the fact that, although the *Joint Statement* of July 2018 specifically mentioned that both sides would "*work together toward zero tariffs (…) on non-*

auto industrial goods" (emphasis added), the proposed negotiating directives no longer limit negotiations on tariff reductions to *non-auto* industrial goods and specifically state that the EU would be *"ready to take into account potential US sensitivities for certain automotive products*". In fact, Commissioner Malmström was quoted saying that the EU had seen that the US "*did not exclude cars from their negotiating directives*" and that the EU was prepared to put the EU's vehicle tariffs on the negotiating table as part of a broader agreement if the US agreed to work together towards zero tariffs for all industrial goods.

As the US and the EU prepare for future trade negotiations, the very approach might also come under scrutiny. Any such trade agreement would have to be in compliance with the rules of the WTO. Typically, bilateral preferential trade agreements are concluded based on, in particular, Article XXIV of the General Agreement on Trade and Tariffs (hereinafter, GATT) and Article V of the General Agreement on Trade in Services (hereinafter, GATS), which require that duties and other restrictive regulations of commerce be eliminated on "*substantially all the trade*" by a group of two or more customs territories. The definition of the term "*substantially all the trade*" remains controversial, due to the vagueness of the WTO legal texts. Notably, it remains unresolved whether "*substantially all the trade*" constitutes a quantitative requirement only or a quantitative and qualitative requirement. If it were to be quantitative only, it could be argued that a free trade area that excludes a specific sector, even a fundamental one such as agriculture, could still satisfy the "*substantially all the trade*" requirement, if that particular sector were to account only for very limited trade volumes and the trade covered amounted to around 90%. However, if "*substantially all the trade*" were to be considered a qualitative and quantitative requirement, the exclusion of an entire sector, such as agriculture, would not meet the legal requirements. A sectoral agreement, for example an agreement limited to reducing tariffs on "*industrial goods*" would likely not satisfy the WTO requirements. Such agreements would only be compatible with WTO rules if they were also made available on a most-favoured nation's (MFN) basis to all other WTO Members, which would hardly be the bilateral objective of the EU and the US. Importantly, on 23 January 2019, the Commission's proposed negotiating directives were discussed by the European Parliament's Committee on International Trade (hereinafter, INTA Committee) and the Commission's Director General for Trade Jean-Luc Demarty addressed this very issue. He explained to the Members of the Committee that, as long as the US refused to discuss cars, the envisaged agreement on industrial goods would only cover around 85% of EU-US trade, which would not be enough to fulfil the WTO rule.

Considering the parallel intensifying efforts of the EU and the US aimed at reforming the WTO (see *Trade Perspectives*, Issue No. 18 of 5 October 2018), conducting negotiations that would lead to an agreement that could possibly breach WTO rules appears to be an unfortunate parallel undertaking. A possible, and likely less problematic option (from a legal perspective) could be the mere focus on addressing non-tariff measures, for instance, addressing TBT and SPS measures. For example, mutual recognition agreements and structured cooperation on elaborating and aligning technical regulations and standards could be agreed outside of preferential trade agreements. This might result in significant trade facilitation for businesses and traders on both sides, and could, thereby, significantly enhance bilateral trade.

With regards to tariffs on cars, the US Department of Commerce is expected to publish, by 17 February 2019, its report on the national security implications of auto imports into the US. The report would likely determine whether tariffs on auto imports could also be justified by national security determinations under Section 232 of the US *Trade Expansion Act of 1962*. Should the report be submitted to US President Trump on 17 February 2019 and recommend the imposition of additional tariffs, he would have until 18 May 2019 to take a decision on the matter. While the US threatened, at various instances the imposition of additional tariffs on car exports from the EU, such a move would clearly foil the agreement reached in July 2018, which sought to prevent the US from imposing further tariffs while discussions within the *Executive Working Group* were ongoing, and would overshadow the envisaged trade negotiations.

The EU and the US have now both taken an important step towards restarting substantive trade negotiations. On the EU side, the Council still needs to approve the two negotiating

directives before the Commission can engage in trade negotiations with the US. In the US, the US Congress now has 30 days to review the negotiating objectives published by the USTR. Once both sides have finalised their internal preparations and procedures, negotiations could commence later this year. However, in view of the end of the current Commission's mandate on 31 October 2019 and the impending US Presidential election campaign, it remains to be seen whether any significant progress can be reached before the new European Commissioners take office in November of this year or even before the US Presidential election in November 2020. Interested stakeholders and businesses in the EU and the US should diligently follow the developments regarding the upcoming EU-US negotiations and engage early in the game so that their interests can be taken into account by the negotiators.

As the EU continues to assess revoking overall trade preferences, the EU imposes safeguard measures on *Indica* rice from Cambodia and Myanmar

On 16 January 2019, the European Commission (hereinafter, Commission) decided that, as of 18 January 2019, the EU would reinstate the normal customs duty of EUR 175 per metric tonne in year one, progressively reducing it to EUR 150 per metric tonne in year two, and to EUR 125 per metric tonne in year three on *Indica* rice from Cambodia and Myanmar. Until 18 January 2019, *Indica* rice imports from both of these ASEAN countries had benefitted from trade preferences under the EU's *Everything But Arms* (hereinafter, EBA) preferential trading scheme, which is part of the EU's Generalised Scheme of Preferences (hereinafter, GSP). In March 2018, the Commission had launched a safeguard investigation, which confirmed that a significant increase of imports of *Indica* rice from Cambodia and Myanmar into the EU had caused economic damage to EU rice millers. Additionally, the EU is currently assessing whether or not to withdraw overall trade preferences under the EBA status accorded to Cambodia and Myanmar, due to the political and human rights situation in the two countries.

On 16 February 2018, the Commission had received a request from the Government of Italy pursuant to Article 22 of *Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences* (hereinafter, GSP Regulation). Italy requested the adoption of safeguard measures concerning rice of the type *Indica* originating in Cambodia and Myanmar. All other rice-producing EU Member States (*i.e.*, Bulgaria, France, Greece, Hungary, Portugal, Romania, and Spain) supported the request. Article 22(1) of the GSP Regulation provides that, "*Where a product originating in a beneficiary country (…), is imported in volumes and/or at prices which cause, or threaten to cause, serious difficulties to Union producers of like or directly competing products, normal Common Customs Tariff duties on that product may be reintroduced*". Article 23 of the GSP Regulation then further defines "*serious difficulties*", which "*shall be considered to exist where Union producers suffer deterioration in their economic and/or financial situation*".

After having determined that the request by the Government of Italy contained sufficient evidence showing that *Indica* rice originating in Cambodia and Myanmar was imported in volumes and at prices causing serious difficulties to the EU industry, the Commission published, on 16 March 2018, the Notice of the initiation of a formal safeguard investigation. In *Commission Implementing Regulation (EU) 2019/67 of 16 January 2019 imposing safeguard measures with regard to imports of Indica rice originating in Cambodia and Myanmar/Burma* (hereinafter, Implementing Regulation) the Commission provides a detailed overview of the investigation and the conclusions reached, leading the Commission to impose safeguard measures. In general terms, the Commission determined that imports of *Indica* rice, from both Cambodia and Myanmar combined, had indeed increased by 89% in the past five rice-growing seasons. More specifically, *Indica* rice imports from Cambodia amounted to around 163,000 metric tonnes in 2012/2013 and to around 249,000 metric tonnes in 2016/2017, while imports from Myanmar increased from around 2,000 metric tonnes in 2012/2013 to around 62,000 metric tonnes in 2016/2017. The market share of rice imports from Cambodia and Myanmar combined increased from 15.6% in 2012/2013 to 31.4% in 2016/2017, resulting from an increase from 15.4% to 25.1% for Cambodia and from 0.2% to

6.3% for Myanmar. At the same time, it was determined that the EU rice industry's market share decreased from 61% to 39% during the investigated period. The investigation also determined that prices of *Indica* rice from Cambodia and Myanmar were substantially lower than those on the EU market and had actually decreased over the relevant period. The Commission drew the conclusion that the significant increase of imports and market share for imports of *Indica* rice from Cambodia and Myanmar resulted from the lower price level of those imports.

On the basis of the determinations reached in the investigation, the Commission concluded that *Indica* rice from Cambodia and Myanmar was imported in volumes and at prices which caused serious difficulties to the EU industry and that, consequently, safeguard measures were warranted. Pursuant to Article 22(1) of the GSP Regulation, the Common Customs Tariff applied duties of 175 EUR per metric tonne should therefore be reinstated. The Commission then refers to Article 28 of the GSP Regulation, which provides that "*Common Customs Tariff duties shall be reintroduced as long as necessary to counteract the deterioration in the economic and/or financial situation of Union producers, or as long as the threat of such deterioration persists*" and that the "*period of reintroduction shall not exceed three years, unless it is extended in duly justified circumstances*". On this basis, the Commission considers that, with respect to *Indica* rice from Cambodia and Myanmar, measures should be introduced for a period of three years in order to allow the EU industry to "*fully recover from the effects of the imports*" from Cambodia and Myanmar. Considering the specific aim of the EBA scheme to assist least developed countries, the Commission considered that the safeguard measures should be progressively liberalised during the three-year period. Importantly, the Commission's Implementing Regulation also provides for a so-called '*shipping clause*', meaning that *Indica* rice shipments from Cambodia and Myanmar, which were already on the way to the EU on 18 January 2019, are not subject to the duty, provided that the destination of such products cannot be changed.

Already during the investigation, Cambodia criticised the data that the EU collected and used as a basis for the decision. During the investigation, the Government of Cambodia put forth various arguments putting into question the Commission's approach and conclusions reached. First, the Government of Cambodia (and other interested parties) claimed that aromatic *Indica* rice should be excluded from the scope of the investigation because it had different characteristics than other types of *Indica* rice and because it did not compete with rice produced in the EU. The Commission rejected this claim, noting that *Indica* rice covered a wide range of types, including fragrant and aromatic rice. Cambodia further criticised the Commission's methodology to determine the "*undercutting margins*" of the rice prices, which led the Commission to review and adjust its calculations. Furthermore, Cambodia provided the EU with alternative or additional explanations with respect to the situation of rice millers in the EU, suggesting that increased imports from Guyana and a cyclical shift by EU rice growers from *Indica* to *Japonica* rice (*i.e.*, a round type of rice used for paella and risotto preparations) had caused the economic difficulties. The Commission refuted all claims by referring to the strong increase of shipments from Cambodia and Myanmar at lower prices, which were causally linked to the serious difficulties experienced by EU rice millers.

After the EU made its decision public, Cambodia reiterated its critical views and announced that it would look into legal action against the safeguards, while at the same time dismissing the consequences of the safeguards, noting that it would pursue other export destinations. On 18 January 2019, the Secretary of State at Cambodia's Ministry of Commerce, Mr. Sok Sopheak, stated that the Government of Cambodia was launching an investigation into whether the EU's safeguards violated international law and was looking for evidence to bring a case against the safeguards. More specifically, Mr. Sok asserted that the EU's actions were not fully in agreement with international law and scientific evidence, and did not accurately reflect social and economic realities, though he did not detail in which *forum* such legal action would be pursued. Kann Kunthy, Vice President and Managing Director of *Amru Rice Cambodia*, reiterated the argument that Cambodia should challenge the safeguards because EU Member States did not produce fragrant rice, and were not in direct competition with Cambodian rice. Currently, 43% of Cambodia's rice exports are destined for the EU. A possible

first step by Cambodia and Myanmar could be to request the Commission to review the reintroduction of normal Common Custom Tariff duties on the basis of Article 18 of *Commission Delegated Regulation (EU) No 1083/2013 of 28 August 2013 establishing rules related to the procedure for temporary withdrawal of tariff preferences and adoption of general safeguard measures*. Article 18(2) thereof provides that "*any interested party may submit a written request for reinstatement of the tariff preferences providing prima facie evidence that the reasons justifying the reintroduction of normal duties no longer apply*".

Finally, in Recital 64 of the Implementing Regulation, the Commission notes that consumers in the EU did not make a difference between EU rice and imported rice. This is attributed to the fact that the origin of the rice is typically unknown to the consumer, as the origin of the rice is often not indicated on the packaging. However, it must be recalled that Italy is already addressing exactly this aspect domestically. On 16 August 2017, the Government of Italy had published a Decree on the mandatory country of origin labelling for rice in Italy's Official Journal (*i.e.*, *Decreto 26 luglio 2017 - Indicazione dell'origine in etichetta del riso*) (see *Trade Perspectives*, Issue No. 16 of 8 September 2017). The labelling requirements apply for a test period from 13 February 2018 to 31 December 2020. While raising the consumer's awareness as to the origin of specific products may be interesting in economic terms and be used for marketing purposes, according to According to Article 39(2) of *Regulation (EU) No 1169/2011 on the provision of food information to consumers*, such Country of Origin Labelling (COOL) is only permitted when a proven link between certain qualities of the food and its origin or provenance can be established. It is also unclear if consumers would indeed favour domestically produced rice over rice imports from countries such as Cambodia or Myanmar.

On 5 October 2018, in a separate, but related development, European Commissioner for Trade Cecilia Malmström had announced of having notified Cambodia that, due to human rights violations, the EU would launch a procedure for the withdrawal of all trade preferences under the EU's EBA preferential trading scheme. However, the Commission has not yet issued the formal notice beginning the withdrawal procedure. Similarly, Commissioner Malmström had announced that the Commission would assess the human rights situation in Myanmar, which also currently benefits from EBA preferences (see *Trade Perspectives*, Issue No. 22 of 30 November 2019). The Commission has sent a high-level mission to Myanmar to assess the situation on the ground, which could result in a similar notice concerning the possible withdrawal of trade preferences. Both countries appear to take action to address the EU's concerns, though Myanmar is also increasingly implementing economic reforms to enhance trade with third countries and mitigate the possible effects of forthcoming EU actions. On the side-lines of a ministerial meeting between the EU and ASEAN Ministers, on 22 January 2019, Commissioner Malmström met with Ministers from Cambodia and Myanmar, reiterated the EU's concerns, but also underlined that the EU remained open for dialogue.

Cambodia and Myanmar should continue to place special emphasis on addressing the EU's ongoing assessment with respect to their overall EBA trade preferences and the underlying concerns, as the withdrawal of all EBA trade preferences would have significant effects on both economies. The reintroduction of duties for *Indica* rice from Cambodia and Myanmar already took effect on 18 January 2019 and will apply for a period of three years, unless withdrawn prior to that date by the EU. Interested stakeholders in the affected industry sectors and within the affected countries should carefully assess the consequences of the safeguards and the implications of the possible withdrawal of preferences and engage with the relevant EU officials and their respective Governments.

EU official controls on imports of feed and food of non-animal origin – The European Commission adjusts the rules for certain fruits, nuts and vegetables

On 11 January 2019, the European Commission (hereinafter, Commission) published, in the EU's Official Journal, *Commission Implementing Regulation (EU) 2019/35 of 8 January 2019 amending Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 of the*

European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin. The Implementing Regulation adjusts the rules applicable to a number of feed and food products, relaxing conditions for certain products and tightening the rules for others. Such increased controls are part of the EU's broader framework on official controls on imports, which are important to ensure compliance with the EU's food and feed safety requirements, but which can also pose serious problems and create inconveniences for traders.

Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules provides that EU Member States shall ensure that official controls are carried out regularly, on a risk basis and with appropriate frequency, to achieve the objectives of the Regulation, notably those of (*inter alia*) preventing, eliminating or reducing to acceptable levels the risks to humans and animals. *Regulation 882/2004* provides the framework for the various import control regimes that the EU applies. In general terms, the EU applies four different import control regimes for feed and foods of non-animal origin, based upon the perceived risk for EU consumers: 1) Pre-export checks carried out by a third country on feed and food immediately prior to export to the EU, with a view to verifying that the exported products satisfy EU requirements. In this case, EU Member States only subject less than a 1% of consignments to controls upon importation. This is the least burdensome import regime for importers. 2) No specific regime. When there is no specific import control regime, Chapter V of *Regulation (EC) No 882/2004*, setting out the general rules for official controls on the introduction of feed and food from third countries, applies. Controls at the port of entry are at the discretion of the relevant EU Member States' authorities. 3) Increased controls based on emerging or known risks and on the basis of *Regulation (EC) No 669/2009*. Under this regime of increased controls, there is increased testing at a rate specified by the EU and the costs are borne by the operator. EU Member States report the rejection rates to the Commission. 4) Safeguard measures. The most rigorous import regime, in case of the highest perceived risk, provides for so-called safeguard measures. Article 53 of *Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety* establishes different emergency measures for food and feed of EU origin or imported from a third country. Safeguard measures are introduced by the Commission through dedicated implementing regulations. The various import regimes have significant implications for importers into the EU and may mean important costs and delays with respect to accessing the EU market.

The EU, more specifically the Commission in coordination with experts from EU Member States, continuously monitors the compliance of imports and adjusts the official controls framework and the rules applicable to certain feed and food of non-animal origin accordingly. In general terms, decisions are taken by the Commission in accordance with the opinion of the EU's Standing Committee on the Plants, Animals, Food and Feed (hereinafter, PAFF Committee), which is assisted by the EU's Expert Committee on Agricultural Contaminants in Food. Most importantly, the Commission and the relevant section of the PAFF Committee regularly review Annex I of *Regulation 669/2009*, which lists the '*high-risk*' products that are subject to increased controls. Imports of certain feed and food of non-animal origin from certain non-EU countries considered to be '*high-risk*' may only enter the EU through specific ports and airports approved as designated points of entry (*i.e.*, DPEs), where official controls are carried out at a certain frequency (*i.e.*, a percentage of the total consignments), as established in *Regulation 669/2009*. A '*high-risk*' product is a feed or food product that carries either a known or an emerging risk to public health, due to the presence of contaminants and/or of undesirable substances such as aflatoxins, salmonella, pesticide residues, norovirus and hepatitis A. Annex I of *Regulation 669/2009* lists the '*high-risk*' products that are subject to increased controls. Annex I to *Regulation 669/2009* is continuously amended and the EU, at least theoretically, looks at a range of information, and then adjusts the frequency or maintains the frequency of increased controls under *Regulation 669/2009*. The relevant sources of information to be taken into account when reviewing the list are listed in sentence one of Article 2 of *Regulation 699/2009* '*Updates to Annex I*', which provides that "*In order to set up and*

regularly amend the list in Annex I, at least the following sources of information shall be taken into account: (a) data resulting from notifications received through the RASFF; (b) reports and information resulting from the activities of the Food and Veterinary Office [now the Commission's Health and Food Audits and Analysis Directorate]*; (c) reports and information received from third countries; (d) information exchanged between the Commission and Member States, and the European Food Safety Authority; (e) scientific assessments, where appropriate*". In fact, sentence 2 of Article 2 of *Regulation 699/2009* requires the Commission to conduct regular reviews, stating that *"The list in Annex I shall be reviewed on a regular basis, and at least quarterly".*

On 14 January 2019, the most recent amendment of Annex I of *Regulation 669/2009* entered into force. *Commission Implementing Regulation (EU) 2019/35 of 8 January 2019 amending Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin* adjusts the frequency of controls for a number of feed and food products. According to Recital 5 of the Implementing Regulation, the occurrence and relevance of recent food incidents notified through the Rapid Alert System for Food and Feed (hereinafter, RASFF), as established by R*egulation (EC) No 178/2002*, information regarding official controls performed by EU Member States on feed and food of non-animal origin, as well as the biannual reports on consignments of feed and food of non-animal origin submitted by EU Member States to the Commission, in accordance with Article 15 of Regulation 669/2009, indicated that the list should be amended.

Most importantly, the Commission added a number of new products to the list for which the relevant sources of information indicated the emergence of new risks to human health. First, this concerns consignments of aubergines from the Dominican Republic (frequency of controls of 20%), beans from Kenya (frequency of controls of 5%), and peppers (other than sweet) from Uganda (frequency of controls of 20%), because of the emergence of new risks to human health due to possible pesticide residues contamination. Secondly, increased controls were introduced for consignments of black pepper from Brazil (frequency of controls of 20%), sweet peppers from China (frequency of controls of 20%), and sesamum seeds from Ethiopia (frequency of controls of 50%), because the relevant sources of information indicated the emergence of new risks to human health due to possible Salmonella contamination. At the same time, the Commission deleted the entry concerning pineapples from Benin (previously at a frequency of controls of 10%) because the available information indicated "*an overall satisfactory degree of compliance with the relevant safety requirements*" provided for in EU legislation and for which an increased level of official controls was, therefore, no longer justified.

Finally, the Commission adjusted a number of existing entries to reflect recent developments and additional available information. Since relevant sources of information indicated an increased degree of non-compliance with the relevant requirements provided for in EU legislation warranting an increase in the level of official controls, the Commission decided to increase the level of controls for sweet peppers and peppers (other than sweet) from Egypt (from a frequency of controls of 10% to 20%), peppers (other than sweet) from India and Pakistan (from a frequency of controls of 10% to 20%), peppers (sweet or other than sweet) from Sri Lanka (from a frequency of controls of 20% to 50%), and hazelnuts from Georgia (from a frequency of controls of 20% to 50%). Another adjustment was made concerning the scope of the entry concerning hazelnuts from Georgia. Here, the Commission decided to amend the entry to include additional forms of the product other than the ones currently listed, where those other forms present the same risk. The Commission, therefore, decided to amend the existing entry concerning hazelnuts from Georgia to also include flour, meal and powder of hazelnuts, as well as hazelnuts otherwise prepared or preserved.

Apart from the changes to the list in Annex I of *Regulation 669/2009*, it is also relevant to consider what the Commission did not evidence sufficient improvements, concerning the degree of compliance with the relevant EU requirements, in several other products originating in countries currently subject to a very high frequency of controls. For instance, groundnuts

(peanuts) from Bolivia (frequency of controls of 50%); palm oil from Ghana (frequency of controls of 50% due to a hazard of Sudan dyes, a food colouring that is considered carcinogenic); Chinese celery from Cambodia (frequency of controls of 50%); turnips from Lebanon (frequency of controls of 50%); and coriander leaves, basil (holy, sweet), mint, parsley, okra, and peppers (other than sweet) from Viet Nam (frequency of controls of 50%), fall within this category.

While preferential trade agreements and other schemes granting trade preferences to third countries, such as the EU's Generalised System of Preferences (GSP), provide a multitude of countries with preferential market access to the EU market, non-tariff measures, such as SPS measures translating into food and feed safety requirements for imports into the EU, also play an important role for traders and exporters around the world. The continuous monitoring by the Commission and EU Member States' experts, and the related adjustment of the applicable import regimes and import rules, are issues to be constantly monitored for any business trading in feed and/or food of non-animal origin. Being aware of the EU rules, addressing the concerns, and working together with the Commission and with EU Member States' authorities, as well as with the respective Government in the exporting countries, is the only way to improve the conditions of market access to the EU.

The adjusted rules for the various products already apply since 14 January 2019. However, the Commission and EU Member States' experts continuously monitor the developments and improvements, as well as deteriorations in the import performance, which are often quickly reflected in the applicable rules through further implementing regulations. At the latest, the next review and adjustments can be expected in June/July of this year. Businesses dealing with the affected products should closely monitor the discussions at the EU level and engage with the relevant stakeholders. Improvements concerning the controls upon importation into the EU can lead to significant benefits in terms of trade facilitation, reduction of costs, time savings and increased competitiveness on the EU market.

Recently Adopted EU Legislation

Customs Law

- *Commission Implementing Regulation (EU) 2019/99 of 22 January 2019 terminating the absorption reinvestigation concerning imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India without amending the measures in force*

- *Commission Implementing Regulation (EU) 2019/67 of 16 January 2019 imposing safeguard measures with regard to imports of Indica rice originating in Cambodia and Myanmar/Burma*

- *Council Decision (EU) 2019/52 of 20 December 2018 authorising the opening of negotiations for an agreement amending the existing tariff rate quota for poultry meat and poultry meat preparations and amending the existing tariff regime for other poultry cuts, set out in Annex I-A to Chapter 1 of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part*

- *Commission Implementing Decision (EU) 2019/54 of 9 January 2019 concerning the validity of certain binding tariff information*

Trade Remedies

- *Commission Implementing Regulation (EU) 2019/73 of 17 January 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of electric bicycles originating in the People's Republic of China*

- *Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China*

- *Commission Implementing Regulation (EU) 2019/59 of 14 January 2019 imposing a definitive anti-dumping duty on imports of aluminium radiators originating in the People's Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and the Council*

Food and Agricultural Law

- *Commission Implementing Decision (EU) 2019/81 of 17 January 2019 amending Annex I to Implementing Decision (EU) 2016/2008 concerning animal health control measures relating to lumpy skin disease in certain Member States*

- *Commission Implementing Decision (EU) 2019/82 of 17 January 2019 amending the Annex to Implementing Decision (EU) 2016/2009 approving the vaccination programmes against lumpy skin disease submitted by the Member States*

- *Commission Implementing Regulation (EU) 2019/35 of 8 January 2019 amending Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin*

Other

- *Council Decision (EU) 2019/105 of 20 December 2018 on the position to be taken, on behalf of the European Union, within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, concerning the extension of the EU-Israel Action Plan*

- *Decision No 1/2018 of the EU-Ukraine Customs Sub-Committee of 21 November 2018 replacing Protocol I to the EU-Ukraine Association Agreement, concerning the definition of the concept of 'originating products' and methods of administrative cooperation [2019/101]*

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