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After more than 20 years of discussions, 76 WTO Members launch negotiations within the WTO for a multilateral framework of rules on electronic commerce

On 25 January 2019, 76 parties, notably the EU and its Member States, as well as 48 other Members of the World Trade Organization (hereinafter, WTO), agreed to begin negotiations to establish global rules on electronic commerce (hereinafter, e-commerce) and released a Joint Statement at the WTO. Negotiations on a WTO *Agreement on trade-related aspects of electronic commerce* could begin as early as March of this year. The announcement on the launch of negotiations led to rather critical reactions by certain civil society organisations, as countries increasingly regulate legal and technical aspects related to e-commerce and data.

As services, including electronic services, play an increasingly large role in terms of trade and trade volumes, regulating certain aspects on a global level within the WTO appears more and more important. Related issues, such as data localisation, data flows and data privacy have also become relevant and are increasingly regulated around the world. In order to allow for compatible rules and ensure trade facilitation, a certain degree of multilateral guidance appears to be the best solution going forward. Already at the second WTO Ministerial Conference, back in May 1998, WTO Members adopted the *Ministerial Declaration on Global Electronic Commerce*, which urged the WTO General Council to establish a comprehensive work programme to examine trade-related issues of global e-commerce. The Work Programme on Electronic Commerce (hereinafter, Work Programme) was adopted by the WTO General Council on 25 September 1998. WTO Members agreed that discussions on the various aspects of e-commerce would take place in the WTO Council on Trade in Goods, the Council on Trade in Services, the Trade Related Intellectual Property Rights Council and the Committee on Trade and Development. It was agreed that the WTO General Council play a central role and keep the work programme under continuous review.

In the context of the Work Programme, the term '*electronic commerce*' is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means. The scope of the Work Programme was then divided among the various WTO bodies and includes, *inter alia*, the treatment of electronic commerce within the legal framework of the General Agreement on Trade in Services (hereinafter, GATS) and General Agreement on Tariffs and Trade (hereinafter, GATT), the protection of privacy and public morals and the prevention of fraud, the access to and use of public telecommunications transport networks and services, the rules of origin, the increased participation of developing countries in the e-commerce marketplace, the protection and enforcement of copyright and trademarks, and the

enhancement of the participation of developing countries and their small and medium-sized enterprises (SMEs). The Work Programme also explores the economic development opportunities afforded by e-commerce for developing countries, particularly least-developed countries.

In the above-mentioned Declaration, WTO Members also agreed to maintain their "*practice of not imposing customs duties on electronic transmissions*". Currently, this *moratorium* takes the form of a WTO Ministerial Conference decision, which has been renewed at every WTO Ministerial Conference since 1998. At the 11th WTO Ministerial Conference in December 2017, WTO Members once again agreed to extend the *moratorium*, noting that they agreed "*to maintain the current practice of not imposing customs duties on electronic transmissions until our next session which we have decided to hold in 2019*". The decision would again be re-evaluated at the next Ministerial Conference, based on reports submitted by the WTO bodies and reports to the next the Ministerial Conference, which is now scheduled to take place in June 2020 in Kazakhstan.

At the 10th Ministerial Conference in December 2015 in Nairobi, WTO Members adopted a Ministerial Decision on the Work Programme on E-commerce. WTO Members agreed to continue abstaining from imposing customs duties on electronic transmissions and instructed the General Council to hold periodic reviews of progress on the Work Programme at its meetings and to report to the next Ministerial Conference in 2017. From July 2017, and in anticipation of the 11th Ministerial Conference in December of that year, WTO Members prepared more focused papers and, from September 2017 to December 2017, the General Chair of the Council began intensive consultations with WTO Members in preparation for the Ministerial Conference. It was envisaged that e-commerce is one of the areas in which the Ministerial Conference could deliver important progress. The Chair's bilateral consultations and the subsequent informal open-ended meetings focused on four main areas: 1) The future of the Work Programme; 2) The *moratorium*; 3) Possible negotiations on e-commerce; and 4) The setting up of a working group or other institutional structure, as suggested by some WTO Members. However, at the 11th Ministerial Conference in Buenos Aires in December 2017, no consensus was reached on a common initiative on e-commerce by all WTO Members. WTO Members only agreed to continue with the work on e-commerce under the previous Work Programme and to a two-year extension of the *moratorium* on duties until the next Ministerial Conference.

At the 11th Ministerial Conference in 2017, Australia led an initiative on e-commerce. As no broader agreement was possible involving all WTO Members, 67 WTO Members launched an initiative to work together as a group towards future negotiations on electronic commerce and agreed on a *Joint Statement on Electronic Commerce* (see *Trade Perspectives*, Issue No. 1 of 12 January 2018). The group accounts for around 77% of global trade and has been described as an opportunity to update international trade rules to ensure that they keep pace with technological advances. The Joint Statement notes that the group would initiate joint exploratory work towards future WTO negotiations on the trade-related aspects of electronic commerce and that participation would be open to all WTO Members and be without prejudice to participants' positions on future negotiations. The group pledging to work towards new WTO e-commerce rules included the EU, Japan, Canada, Brazil, South Korea, Russia and other major and emerging economies, but it notably excluded China, India, Indonesia and Viet Nam. A number of WTO Members, led by India, insisted that the Doha Round development issues must be dealt with before any new issues be addressed and negotiated. Those arguing for WTO negotiations on e-commerce noted that 70 regional trade agreements already include provisions or chapters on e-commerce and that the WTO had to account for such developments.

Now, more than twenty years after the first WTO Work Programme on Electronic Commerce and a little over a year after the 11th Ministerial Conference, 76 countries officially launched negotiations within the WTO for a multilateral framework of rules on electronic commerce. The 76 WTO Members issued a Joint Statement, listing the parties involved and providing an outlook on the negotiations ahead. Evidently, 9 further WTO Members joined the group since

the Ministerial Conference. Most notably, China is now listed as one of the WTO Members intending to join the negotiations. Further additions to the list of negotiating parties include Cambodia, Thailand and the United Arab Emirates.

The Joint Statement does not yet provide a detailed overview of the intended negotiations, but provides some general guidelines. The Joint Statement notes that the negotiating parties would "*seek to achieve a high standard outcome that builds on existing WTO agreements and frameworks with the participation of as many WTO Members as possible*" and that they recognised and would "*take into account the unique opportunities and challenges faced by Members, including developing countries and LDCs, as well as by micro, small and medium sized enterprises, in relation to electronic commerce*". The Joint Statement ends with a call encouraging all WTO Members to participate in the negotiations in order to "*further enhance the benefits of electronic commerce for businesses, consumers and the global economy*". In its press statement on the issue, the European Commission (hereinafter, Commission) provides some additional information on the possible scope of the negotiations. The Commission notes that "*negotiations should result in a multilateral legal framework that consumers and businesses, especially smaller ones, could rely on to make it easier and safer to buy, sell and do business online*". More specifically, the Commission lists five objectives of the negotiations: 1) To improve consumers' trust in the on-line environment and combat spam; 2) To tackle barriers that prevent cross-border sales; 3) To guarantee the validity of e-contracts and e-signatures; 4) To permanently ban customs duties on electronic transmissions; and 5) To address forced data localisation requirements and forced disclosure of source codes.

Reactions to the announcement have been divided. Organisations representing "*businesses, workers, and entrepreneurs around the world*" published an open letter to WTO Trade Ministers lauding the news, particularly noting that "*improving the enabling environment for digital trade and global e-commerce is particularly critical for micro, small and early stage businesses to unlock customers, suppliers, and partners in new markets, integrate into global value chains, and manage their operations*". At the same time, however, coordinated by the global network known as '*Our World Is Not for Sale*' (OWINFS), a number of civil society organisations underlined their "*profound and urgent opposition to these proposed negotiations on e-commerce, which, if concluded, would severely constrain the policy space of countries to develop their economies in the future, and would accelerate the global disadvantaging of workers and small enterprises in all countries vis-à-vis large corporations that characterizes the current global economy*". The letter notes that most relevant aspects could be better accomplished through domestic policies, and through regional integration. This would require policy space, which the multilateral WTO negotiations look poised to inevitably restrict. Finally, the letter notes that a new approach was needed in order to address key issues, such as data governance infrastructure, micro, small, and medium enterprises (MSMEs), employment, taxation, consumer protection, competition, and trade facilitation. It appears that both sides recognise the need for further regulatory guidelines in this ever more important area, but that the best *forum* to do so remains controversial.

As noted by the proponents of WTO negotiations on the issue of e-commerce, the WTO is lagging behind many regional and bilateral trade agreements, which already contain provisions or dedicated chapters on e-commerce. For instance, the EU-Viet Nam and EU-Japan trade agreements provide for chapters on *Liberalisation of Investment, Trade in Services and Electronic Commerce*, and the issue is also being addressed in ongoing trade negotiations. In South-East Asia, the Association of Southeast Asian Nations (hereinafter, ASEAN) established, in 2017, the *ASEAN Work Programme on Electronic Commerce 2017-2025*. Building on this, ASEAN Member States then negotiated the *ASEAN Agreement on E-commerce*, which was endorsed at the 32nd ASEAN Economic Ministers Meeting in August 2018, and signed by most ASEAN Member States on 12 November 2018, at the 2018 ASEAN Summit in Singapore. The *ASEAN Agreement on E-commerce* is intended to help businesses expand and leverage on the region's e-commerce market potential by streamlining governing trade rules. It will establish a cooperation framework to support the development of the digital economy through e-commerce schemes. The *ASEAN Agreement on E-commerce* has three main objectives: 1) To facilitate cross-border e-commerce transactions; 2) To create an

environment of trust and confidence in the use of e-commerce; and 3) To deepen cooperation among ASEAN Member States to further develop and intensify the use of e-commerce to drive regional economic growth.

The group of 76 WTO Members envisage to begin negotiations in March 2019 and underlined that the group remained open for other WTO Members to join. However, while 76 participating countries can already be considered a success in terms of participation, even without further WTO Members joining the negotiations, its broad participation might already lead to complex negotiations, just as overall WTO negotiations have been difficult to manage with 164 Members in recent times. Interested stakeholders should closely monitor the developments related to e-commerce at the multilateral, as well as at the regional and bilateral level. Clearly, this is an area that will inevitably see increased regulatory activity around the world.

Challenging times for international trade: As the EU's trade negotiations' agenda faces obstacles, the US tries to impose a new '*market economy*' provision

As 2019 comes into full swing, the EU continues to move forward with its trade policy agenda, but is facing increasing challenges. On the positive side of things, the EU-Japan Economic Partnership Agreement (hereinafter, EU-Japan EPA) entered into force on 1 February 2019 and the European Parliament will vote on the EU-Singapore Free Trade Agreement (hereinafter, EU-Singapore FTA) on 12 February 2019. At the same time, recent reports note that the ratification of the EU-Viet Nam Free Trade Agreement may be postponed until 2020 and the forthcoming trade negotiations with the US look poised to be challenging at best.

In 2018, EU trade policy underwent the most significant changes since the publication of the Commission's 2015 *Trade for all – Towards a more responsible trade and investment policy* strategy (see *Trade Perspectives*, Issue No. 4 of 23 February 2018). Due to the 2017 Opinion of the Court of Justice of the European Union (hereinafter, CJEU) regarding the EU-Singapore FTA, the EU is now separating investment protection provisions from trade agreements. At the same time, the EU began following a rather unorthodox approach with respect to trade negotiations with the US, trying to accommodate various concerns and the current US Administration's policies. In the Commission's 2015 *Trade for all* strategy, the Commission had laid out its detailed trade policy objectives with respect to its key trading partners. With respect to Latin America, the new strategy prioritised trade negotiations with Chile and Mexico. Negotiations for the EU-Mexico trade agreement have been concluded and the text is currently undergoing '*legal scrubbing*'. Negotiations with Chile were progressing well, but currently appear to be paused. With regards to Asia, the Commission noted, in 2015, that the conclusion of the EU-Japan EPA was a "*strategic priority*". Furthermore, the Commission noted that the conclusion of negotiations with Singapore and Viet Nam had "*set a second benchmark for engaging with other partners*", such as Indonesia, with which negotiations are ongoing. In 2018, the Commission launched trade negotiations with Australia and New Zealand, where new negotiation rounds will take place in March and February, respectively. One of the main priorities of the Commission's trade strategy in 2015 had been the EU-US Transatlantic Trade and Investment Partnership (TTIP), but negotiations were suspended when the current US Administration took office, although negotiations had been subject to widespread public concerns since the beginning. As current developments demonstrate, such strategies appear to be always subject to current events and the ever-evolving political environment.

On 1 February 2019, the EU-Japan EPA entered into force after negotiations were concluded on 8 December 2017 (see *Trade Perspectives*, Issue No. 23 of 15 December 2017). Once the agreement is fully implemented, Japan will have eliminated customs duties on 97% of goods imported from the EU, and, for the EU, the overall level of liberalisation is set at 99%, with 96% of its tariff lines eliminated on the date of entry into force. Most importantly, the agreement removes various non-tariff measures and barriers, for example by endorsing international standards on cars and with respect to barriers for key EU food and drink exports. Some of the EU sectors that expect to particularly benefit from the EU-Japan EPA are the wine, cheese,

beef and pork sectors. For instance, the agreement removes Japanese import duties on many cheeses, such as Gouda and Cheddar (which are currently at 29.8%), as well as on wine exports (currently, on average, at 15%). In addition, EU exporters of beef and pork should be able to substantially increase their exports to Japan. The agreement will also ensure the protection of geographical indications (hereinafter, GIs), within both parties, and delivers the opening of services markets, in particular with respect to financial services, e-commerce, telecommunications and transport. As a novelty, the agreement's Chapter on Trade and Sustainable Development includes a specific commitment to the Paris Climate Agreement. The entry into force of the EU-Japan EPA is a major achievement for the EU and Japan in the current global trade environment. In April 2019, the first meeting of the EU-Japan Committee is scheduled to be held, which will already review the first months of implementation of the agreement. With respect to the separate investment protection agreement, negotiations with Japan continue on investment protection standards, as well as on investment protection dispute resolution. Chief negotiators are scheduled to meet in March 2019 to take stock of the negotiations.

In Asia, the other two relevant agreements, for which negotiations have been concluded, are the EU-Singapore FTA (the first agreement negotiated with an ASEAN Member State) and the EU-Viet Nam Free Trade Agreement (hereinafter, EVFTA). However, despite negotiations having been concluded for a long time, the agreements have yet to be ratified and to enter into force. With respect to Singapore, the delay was due the CJEU's opinion of 16 May 2017, that had determined that the provisions of the agreement relating to non-direct foreign investment, and those relating to dispute settlement between investors and States, did not fall within the exclusive competence of the EU, so that the EU-Singapore FTA could not be concluded without the ratification by EU Member States' relevant Parliaments (see *Trade Perspectives*, Issue No. 1 of 13 January 2017 and Issue No. 10 of 19 May 2017). Following the opinion by the CJEU on the division of competences between EU and EU Member States, the agreement originally concluded with Singapore in 2014 was split into two separate agreements, one on trade and the other on investment. Only recently, on 24 January 2019, the European Parliament's Committee on International Trade (hereinafter, INTA Committee) gave its consent to the EU-Singapore FTA with 25 votes in favour to 11 against, and one abstention. The INTA Committee also agreed to the Investment Protection Agreement with 26 votes in favour to 11 against. This agreement, once ratified by all EU Member States, will replace the existing bilateral agreements between Singapore and 13 EU Member States.

With respect to Viet Nam, the wait does not appear to be over yet, despite the agreement having been agreed in principle in August 2015. The EUVFTA was already expected to be ratified by the European Parliament in 2018. However, concerns on human rights issues in Viet Nam were raised by Members of the European Parliament (hereinafter, MEPs) and, subsequently, delayed the vote on the agreement. In September 2018, MEPs signed a public letter raising serious concerns about the human rights situation in Viet Nam and called on the Government of Viet Nam to improve its human rights record ahead of any vote on the trade agreement. A number of MEPs requested that the European Parliament not vote on the EUVFTA, as long as Viet Nam does not improve the human rights situation and has not approved several of the International Labour Organization (ILO) conventions referred to in the Chapter on Trade and Sustainable Development of the EUVFTA. On 1 January 2019, Romania took over the Presidency of the Council of the EU and, in its provisional agenda for the six months period of the Presidency, only scheduled the decision on the signature and conclusion of the EUVFTA for 28 May 2019. This is a date after the elections of the European Parliament, which will take place from 23 to 27 May 2019. Consequently, this means that the ratification by the European Parliament will have to await the constitution of the next European Parliament, the inaugural session of which is scheduled for 2 July 2019. Considering this further delay, the EUVFTA will likely only enter into force in 2020. Despite the delay of the EUVFTA, Viet Nam is currently benefiting from trade preferences under the general arrangement of the EU's Generalized System of Preferences (GSP), which reduces EU import duties for about 66% of all product tariff lines.

On 30 January 2019, the Commission published its report on the ongoing trade discussions with the US. The *Interim Report on the work of the Executive Working Group* provides a detailed overview on the state-of-play. The imposition of import tariffs on steel and aluminium by the US led to the introduction of countermeasures by various affected trading partners, including the EU. In view of the US Administration's threats to impose additional tariffs on car imports from the EU, US President Trump and the President of the Commission Jean-Claude Juncker met in July 2018 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. In the first few months, the meetings focused on exploring how to deliver results on non-tariff measures. Discussions are now turning increasingly towards broader trade negotiations, as the Office of the United States Trade Representative (hereinafter, USTR) published, on 11 January 2019, its *Summary of Specific Negotiating Objectives* and, on 18 January 2019, the Commission submitted two recommendations for negotiating directives to the Council of the EU on 1) *The opening of negotiations of an agreement with the US on conformity assessment*; and 2) *The opening of negotiations of an agreement with the US on the elimination of tariffs for industrial goods* (see *Trade Perspectives*, Issue No. 2 of 25 January 2019).

Part of the USTR's negotiating objectives is a delicate provision with potentially important implications for US trading partners, which appears to have become a standard element in the trade '*toolbox*' of the current US Administration. As part of the *General Provisions*, the USTR's *Summary of Objectives* indicates that a future trade agreement should "*Provide a mechanism to ensure transparency and take appropriate action if the EU negotiates a free trade agreement with a non-market country*". This is not the first time that the US is proposing the inclusion of such provision in a trade agreement. In fact, the US succeeded in inserting it into the Agreement between the United States of America, the United Mexican States, and Canada (hereinafter, USMCA), which is the result of the renegotiations of the North American Free Trade Agreement (NAFTA). Article 32.10(1) of the USMCA first defines '*non-market economy*' as a country "*(a) that on the date of signature of this Agreement, a Party has determined to be a non-market economy for purposes of its trade remedy laws; and (b) with which no Party has signed a free trade agreement*". Article 32.10(2) of the USMCA requires a Party that intends to commence FTA negotiations with a non-market economy country to inform the other Parties at least three months in advance. Upon request of another Party, that Party is required to provide as much information as possible regarding the objectives of those negotiations and to provide the other Parties with an opportunity to review the full text of the agreement, to allow the assessment of its potential impact on the USMCA. Most importantly, Article 32.10(5) provides that the entry by a Party into an FTA with a non-market economy country would allow the other Parties to terminate the USMCA on six months' notice and replace the USMCA with a bilateral agreement between them.

The introduction of such a clause has already been widely criticised after the publication of the USMCA. While not expressly mentioned in the provision, it appears to be clearly a clause aimed at preventing US trading partners from negotiating and concluding any trade agreement with China. China's market-economy status has been a long-disputed issue in the past, as the US continues to deny recognising China market-economy status, which allows the US to maintain high anti-dumping duties on Chinese goods. It now appears that the US intends to set this clause as a standard clause in its negotiations, as part of its new strategy in the ongoing '*trade war*' with China and to also prevent its trading partners from engaging in trade negotiations and concluding trade agreements with China. Most notably, Canada has been considering FTA negotiations with China. Interestingly, the provision in the USMCA only applies to countries with which no Party has signed a free trade agreement, which means that it does not apply to Viet Nam, as Canada and Viet Nam are both Parties to the Comprehensive Progressive Trans-Pacific Partnership (CPTPP). The Government of Canada downplayed the provision, noting that it was not a cause for concern, because the NAFTA already allowed a Party to withdraw from the agreement without cause with a simple notice of six months, which was again included in the USMCA. Still, the provision sends a clear message is becoming a key feature of US trade policy.

The multitude of controversial issues and the deteriorating political climate within the multilateral trading system have made trade policy and trade negotiations more challenging and even more complex. Negotiations will continue, but results may be even less certain than before. Interested stakeholders, businesses in the EU and third countries, and EU trading partners should diligently follow the developments and engage early in the game, so that their interests can be duly considered by the negotiators.

The regulation of maximum limits of pesticide residues in the EU – imported products under scrutiny

The regulation of the maximum levels of pesticide residues in the EU is evolving and is constantly being monitored. An example of the permanent regulatory activity can be observed through the modifications approved during the first month of 2019 to *Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC.* Looking at EU import controls, exceeding EU maximum residue levels (hereinafter, MRLs) of pesticides or residues of pesticides, which are not or no longer approved in the EU, is a recurrent issue that continuously leads to numerous border rejections of consignments from third countries to the EU.

Since 1 January 2019 alone, the Annexes to *Regulation (EC) No 396/2005* were amended seven times by *Commission Regulation (EU) 2019/38 of 10 January 2019*, *Commission Regulation (EU) 2019/50 of 11 January 2019*, *Commission Regulation (EU) 2019/58 of 14 January 2019*, as well as *Commission Regulation (EU) 2019/88*, *Commission Regulation (EU) 2019/89*, *Commission Regulation (EU) 2019/90*, and *Commission Regulation (EU) 2019/91 of 18 January 2019,* as regards maximum residue levels for a number of pesticides in or on certain products.

'*Pesticide residues*' are defined in Article 5 of *Regulation (EC) No 396/2005* as "*residues, including active substances, metabolites and/or breakdown or reaction products of active substances currently or formerly used in plant protection products, which are present in or on the products covered by Annex I to Regulation (EC) No 396/2005, including in particular those which may arise as a result of use in plant protection, in veterinary medicine and as a biocide*". '*Maximum residue level*' (MRL) means "*the upper legal level of a concentration for a pesticide residue in or on food or feed set in accordance with Regulation (EC) No 396/2005, based on good agricultural practice and the lowest consumer exposure necessary to protect vulnerable consumers*".

In the past, EU Member States maintained and managed their own MRLs for residues of pesticides in food. Because this frequently led to trade issues between EU Member States, in the 1970s the EU began harmonising MRLs. Four EU Directives on MRLs, in and on fruit and vegetables, cereals, foodstuffs of animal origin and certain products of plant origin, were adopted for implementation in EU Member States. In 2005, the European Parliament and the Council adopted *Regulation (EC) No 396/2005*, which is directly applicable and no longer needed to be implemented nationally by EU Member States. This regulation repealed all previous EU and national legislation on MRLs for residues of pesticides. Currently, MRLs are only established at EU level. According to Article 18(1)b) of *Regulation (EC) No 396/2005,* a default MRL of 0.01 mg/kg applies for all substances for which no specific MRLs for commodity/pesticide combinations are established in the Annexes of said Regulation.

Exceeding an MRL for a pesticide in or on a product is not automatically a food safety issue, as there are safety margins that apply on top of this regulatory limit. The most recent annual report of the EU's Rapid Alert System for Food and Feed (RASFF) for 2017 lists 186 notifications related to pesticide residues on imports. The number of notifications on pesticide residues in imports into the EU decreased significantly compared to 2016. Naturally, most notifications related to the group of fruits and vegetables, in which most non-compliances on

pesticides are traditionally found. As many as 132, out of the 186 notifications, were rejections at the border of the European Economic Area (EEA), which includes the EU Member States, and also Iceland, Liechtenstein, and Norway. Therefore, these products never entered the EU. This is certainly in part due to the list of commodities held under *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*, which is reviewed at least twice per year, and which requires intensified checks at the border. Recurrent notifications in 2016 concern sweet peppers from Turkey (57 notifications, 55 of which are border rejections, mostly notified by Bulgaria), but also fruit and vegetables from China and Egypt.

From 1 January 2016, however, a new working instruction is applied in the RASFF network for evaluating the risk posed by pesticide residue notifications on the basis of a short-term intake exceeding the acute reference dose (hereinafter, ARfD) for a pesticide active substance. If the ARfD is not exceeded, no health risk is expected. From 2016 onwards, therefore, for notifications recorded in RASFF on pesticide residues, if the MRL and the ARfD are exceeded, the risk is considered '*serious*' and a notification is mandatory. If the MRL is exceeded, but the ARfD is not, a notification can be submitted, provided that there are specific reasons to report such notification on account of a health risk. Such reasons may include a previously unreported substance or a concern for a chronically high consumer exposure, or any other particular reason as to why the infringement could present a higher concern than usual.

According to Article 32 of *Regulation (EC) No 396/2005*, the European Food Safety Authority (EFSA), on the basis of the information provided by EU Member States, is required to prepare an Annual Report on pesticide residues. The 2016 report, published on 25 July 2018, summarises that more than 96% of the samples, analysed for the latest annual report on pesticide residues in food, were found to be within the legal limits; around 51% were free of any quantifiable residues. Therefore, the latest monitoring figures for 2016 show that EU citizens continue to consume food that is largely free of pesticide residues or which contains levels of residues within the legal limits. Vytenis Andriukaitis, European Commissioner for Health and Food Safety, underlined that the report confirmed the high level of compliance of food in the EU. He noted that, every year, thousands of food products are controlled by EU Member States to check that the legal limits are being respected, making sure that the EU's food chain remains the most stringent and controlled in the world.

However, some EU Member States focus on other issues, like the origin of products. According to the annual pesticide report published by the Danish Veterinary and Food Administration and the Technical University of Denmark, published in November 2017, crops imported into Denmark contain "*significantly more*" pesticide residues than equivalent Danish products. Using data from over 2,500 samples taken in 2016, the report found pesticide residues in 45% of fruit samples of Danish origin, in 72% of fruit grown in other EU countries and in 74% of fruit samples from outside of the EU. Numbers for vegetables were lower, with 27% of Danish samples containing traces of pesticides, compared to over half of EU samples (55%) and 43% for non-EU countries. Imported fruit and vegetables were also more likely to contain a combination of different pesticides, one third (33%) of total EU and non-EU samples had a mix of pesticides, compared to Danish samples at 10%. The Danish Veterinary and Food Administration, for example, recalled from the market consignments of mangoes imported from Lao PDR and sent out a RASFF alert, as the residues exceeded the acceptable daily intake (ADI).

On 11 January 2019, the European Commission (hereinafter, Commission) published *Commission Implementing Regulation (EU) 2019/35 of 8 January 2019 amending Regulation (EC) No 669/2009*. This 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 (see *Trade Perspectives*, Issue No. 2 of 25 January 2019). 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. 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, regularly reviewing Annex I of *Regulation (EC) No 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 (EC) No 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, norovirus, hepatitis A and even pesticide residues. Annex I of *Regulation (EC) No 669/2009* lists the '*high-risk*' products that are subject to increased controls. It lists a large number of products that are controlled at an increased frequency because of pesticide residues.

This concerns the following products from South America: 1) Aubergines from the Dominican Republic are tested for '*pesticide residues that can be analysed with multi-residue methods*' (hereinafter, multi pesticide residues') at an increased level of 20%; and 2) Sweet and other peppers and yardlong beans from the Dominican Republic are tested for multi pesticide residues and for residues of Acephate, Aldicarb, Amitraz, Diafenthiuron, Dicofol, Dithiocarbamates (including maneb, mancozeb, metiram, propineb, thiram and ziram) and Methiocarb (at an increased level of 20%).

From Africa, the following imports are concerned: 1) Sweet peppers from Egypt are tested for multi pesticide residues and for residues of Dicofol, Dinotefuran, Folpet, Prochloraz, Thiophanate-methyl and Triforine (20%); 2) Beans from Kenya are tested for multi pesticide residues (5%); and 3) Peppers (other than sweet) from Uganda are tested for multi pesticide residues (20%).

Products from Asia are intensively tested, in particular: 1) Goji berries (wolfberries) from China are tested for residues of Amitraz (10%); 2) Tea, whether or not flavoured, from China is tested for multi pesticide residues and for residues of Tolfenpyrad (10%); 3) Okra from India is tested for multi pesticide residues and for residues of Diafenthiuron (10%); 4) Peppers (other than sweet) from India are tested for multi pesticide residues and for residues of Carbofuran (20%); 5) Chinese celery from Cambodia are tested for multi pesticide residues and for residues of Phenthoate (50%; 6) Yardlong beans from Cambodia are tested for multi pesticide residues and for residues of Chlorbufam (50%); 7) Peppers (other than sweet) from Pakistan are tested for multi pesticide residues (20%); 8) Peppers (other than sweet) from Thailand are tested for multi pesticide residues and for residues of Formetanate, Prothiofos and Triforine (10%); 9) Coriander leaves from Viet Nam are tested for multi pesticide residues and for residues of Dithiocarbamates (including maneb, mancozeb, metiram, propineb, thiram and ziram), Phenthoate and Quinalphos (50%); 10) Basil (holy, sweet), mint, parsley and okra from Viet Nam is tested for multi pesticide residues and for residues of Dithiocarbamates (including maneb, mancozeb, metiram, propineb, thiram and ziram), Phenthoate and Quinalphos (50%); 11) Peppers (other than sweet) from Viet Nam are tested for multi pesticide residues and for residues of Dithiocarbamates (including maneb, mancozeb, metiram, propineb, thiram and ziram), Phenthoate and Quinalphos (50%).

Finally, a number of products from Turkey, where the exceedance of MRLs is a recurrent issue according to the latest RASFF report, are concerned: 1) Lemons are tested for multi pesticide residues (10%); 2) Pomegranates are tested for multi pesticide residues and for residues of Prochloraz (10%); and 3) Sweet Peppers are tested for multi pesticide residues and for residues of Diafenthiuron, Formetanate and Thiophanate-methyl (10%).

Exceeding the EU's MRLs of pesticides, the non-existence of specific MRLs for certain product/pesticide combinations or residues of pesticides, that are not or no longer approved in the EU, is a recurrent issue that leads to numerous border rejections of consignments from third countries imported into the EU. In some cases, the establishment of import tolerances may be beneficial. According to Article 5 g) of *Regulation (EC) No 396/2005,* '*import tolerance*'

means "*an MRL set for imported products to meet the needs of international trade*". Article 6(4) of *Regulation (EC) No 396/2005* provides that applications for import tolerances must be submitted to '*rapporteur'* EU Member States designated to evaluate the respective pesticide, following a given procedure set in the Regulation.

Businesses dealing with affected products, but also other potentially affected products, should closely monitor the regulatory developments at the EU level on MRLs 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

- *Decision No 1/2019 of the ESA-EU Customs Cooperation Committee of 14 January 2019 on a derogation from the rules of origin laid down in Protocol 1 to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, of the one part, and the European Community and its Member States, of the other part, to take account of the special situation of Mauritius with regard to salted snoek [2019/167]*

- *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 on the cumulation of origin between the European Union, the Swiss Confederation, the Kingdom of Norway and the Republic of Turkey in the framework of the Generalised System of Preferences*

- *Notice concerning the entry into force of the Agreement in the form of an Exchange of Letters between the European Union and the Swiss Confederation on the cumulation of origin between the European Union, the Swiss Confederation, the Kingdom of Norway and the Republic of Turkey in the framework of the Generalised System of Preferences*

Trade Remedies

- *Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products*

Food and Agricultural Law

- *Commission Regulation (EU) 2019/229 of 7 February 2019 amending Regulation (EC) No 2073/2005 on microbiological criteria for foodstuffs as regards certain methods, the food safety criterion for Listeria monocytogenes in sprouted seeds, and the process hygiene criterion and food safety criterion for unpasteurised fruit and vegetable juices (ready-to-eat)*

- *Decision No 1/2019 of the EU-Japan Working Group on Wine of 1 February 2019 on the forms to be used for certificates for the import of wine products originating in Japan into the European Union and the modalities concerning self-certification [2019/224]*

Other

- *Decision No 1/2018 of the Trade Committee of 13 December 2018 modifying Appendix 1 to Annex XIII to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Ecuador and Peru, of the other part [2019/179]*

- *Agreement in the form of an Exchange of Letters between the European Union and the People's Republic of China in connection with DS492 European Union — Measures affecting Tariff Concessions on Certain Poultry Meat Products*

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