FRATINIVERGANO
EUROPEAN LAWYERS
TRADE PERSPECTIVES©

Issue No. 1 of 17 January 2020

Welcome to 2020! All of us at *FratiniVergano* hope that you started well the new year and that it will bring good health, success and fulfilment to all.

This edition of *Trade Perspectives*© marks the beginning of our 12th year of publication. It has been a long journey and a real editorial feat to meet that Friday deadline every fortnight 23 times a year with our articles and factual, legal and commercial perspectives on key developments in international trade. We hope that you have always enjoyed our pieces and thank those of you that have actively supported our efforts, contributed to our writing and helped make *Trade Perspectives*© the well-known reality that it has become.

To celebrate this milestone, *Trade Perspectives*© starts today being circulated with a different template and distribution software. This should make it easier for us to measure the interest of the thousands of our readers and interact with them, if need be, to discuss specific articles and issues of legal and commercial interest. We hope that you like the new looks and to hear from you with suggestions, criticisms and comments. Your interest in *Trade Perspectives*© is what motivates us, and we look forward to another year of interaction!

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From Voluntary Export Restraints to Voluntary Import Expansion? Another sad day for the multilateral trading system

The United States of America (hereinafter, US) and the People's Republic of China (hereinafter, PRC) signed on 15 January 2020 a bilateral economic and trade agreement that has been described as the end of Phase 1 of their negotiations to bring under control a tariff escalation and '*trade war*' that had severely affected their commerce during the last three years. Much will have to be understood in detail and the effect of this agreement will be measurable over time both in terms of the relief that it may bring to the US and the PRC, as well as the impact on third countries. However, at least three important considerations can already be made and mark another worrisome development with respect to the fate of the multilateral trading system under the World Trade Organization (hereinafter, WTO).

Firstly, this deal is bilateral in nature, but struck outside of the WTO framework. It is not a preferential trade agreement of the type that the WTO allows to deviate from the fundamental principle of non-discrimination embedded in the Most-Favoured Nation clause. In particular, it

does not cover substantially all the trade between the two parties and yet it is intended to provide preferential terms of market access to each other's territories in ways that will not be extended to other WTO Members. As such, it will inevitably discriminate against other WTO Members and it will likely be inconsistent with WTO rules. It is perhaps revealing that the agreement does hardly reference the WTO, nor does it appear to ground its legal basis in any of the WTO rules. Two of the World's three largest economies and trading blocs agree to a preferential trade deal between themselves and do so largely in disregard of the WTO system with its principles and obligations: hardly the type of '*role models*' that the international trading community needs.

Secondly, while the US hailed the agreement as setting the stage for about USD 200 billion of increased exports to the PRC (*inter alia,* USD 32 billion in agricultural products, USD 52.4 billion in energy, and USD 37.9 billion in services in the two years up to December 2021), this deal will likely achieve such increases by displacing trade of/from other countries to the PRC, thereby likely proving inconsistent with WTO rules. It is clear that the WTO consistency of this agreement was not a fundamental concern of the two parties and it remains to be seen whether any other WTO Member will challenge the discriminatory effects of PRC's preferences for US products under the WTO system, especially in light of the now crippled WTO dispute settlement system. What is perhaps ironic is that, for this deal to work, the PRC will have to act in the very manner that the US has been highly critical of for many years (*i.e.*, as a State actor in a non-market economy that '*forces*' its economic operators, whether they are SOEs or '*private players*', to make choices that they would not otherwise make). The system that will presumably deliver the PRC's commitments under the agreement is in a way reminiscent of the old (and WTO illegal) Voluntary Export Restraints (VERs), but inverted. It could be called Voluntary Import Expansion and its discriminatory effects (*de facto*, if not *de jure*) will likely be as WTO inconsistent as those of the VERs.

Thirdly, a further move away from the checks and balances of the WTO system, with its arguably imperfect, but independent, *super partes* and rules-based system of dispute settlement, is the essentially unilateral system of enforcement and dispute resolution that the US-PRC deal establishes. In fact, under the bilateral economic and trade agreement there is no longer any neutral adjudication mechanism to settle disputes. Each party can now ultimately decide on its own whether the other party is violating the terms of the agreement. The swift and unilateral tool of enforcement is essentially based on a '*snap back*' mechanism that would reinstate/increase tariffs or suspend other concessions (*i.e.*, "*If the Parties do not reach consensus on a response, the Complaining Party may resort to taking action based on facts provided during the consultations, including by suspending an obligation under this Agreement or by adopting a remedial measure in a proportionate way that it considers appropriate with the purpose of preventing the escalation of the situation and maintaining the normal bilateral trade relationship*", under Article 7.4.4(b) thereof). Ultimately, a party to the agreement may decide to withdraw altogether from the treaty should it consider that the other party is acting in '*bad faith*' and arbitrarily (*i.e.*, "*If the Party Complained Against considers that the action by the Complaining Party pursuant to this subparagraph was taken in good faith, the Party Complained Against may not adopt a counter-response, or otherwise challenge such action. If the Party Complained Against considers that the action of the Complaining Party was taken in bad faith, the remedy is to withdraw from this Agreement by providing written notice of withdrawal to the Complaining Party*", under Article 7.4.4(b) thereof). While a '*snap back*' system is not necessarily a bad means of forcing a quick resolution to a dispute, and ultimately proper enforcement of the legal instrument or rebalancing of the level of concessions exchanged, the worrying development is the fact that there is no longer a third, impartial and independent adjudicating body entrusted by the parties with the dispute. Arguably, it will not be the rule of law that prevails, but the sheer economic, political and commercial force of one of the two parties.

Time will tell whether this agreement is a step in the right direction to stop the tit-for-tat war of reciprocal tariff increases and whether it will gradually revert back to a WTO-centred trade relation between the US and the PRC. However, it looks as if this is instead a further assault onto the principles, rules and mechanisms of the WTO. We should all be worried.

The *carousel* is turning: US poised to revise tariffs introduced as countermeasures against the EU in the *Airbus* case

By 13 January 2020, 23:59 US Eastern Time, interested parties were able to submit comments to the Office of the United States Trade Representative (hereinafter, USTR) regarding the '*Review of Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute*' published in the US Federal Register on 12 December 2019. The comments will inform the USTR in its review of the additional tariffs introduced as countermeasures that the US was allowed to implement with respect to the EU and certain EU Member States in relation to the longstanding *Airbus* dispute. The revision of tariffs and their extension to other sectors, known as '*carousel retaliation*' will likely affect new industries or increase tariffs for industries already affected, while other might see relief. In addition to these countermeasures, the US Administration continues to threaten certain EU Member States with the introduction of additional tariffs, notably in response to the digital services taxes being adopted in several EU Member States. It appears that, going into 2020, EU-US trade relations will again be dominated by discussions to avoid or remove additional tariffs, instead of improving trade relations for the benefit of businesses on both sides of the Atlantic.

On 14 October 2019, the WTO Dispute Settlement Body (hereinafter, DSB) had agreed to grant authorisation to the US to suspend certain tariff concessions vis-à-vis the EU. The authorisation was agreed in line with the decision of the WTO arbitrator, issued on 2 October 2019, in the case of *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft* (DS316, hereinafter, *Airbus* case), who concluded that "*the level of countermeasures 'commensurate with the degree and nature of the adverse effects determined to exist' during the 2011-2013 Reference Period amounts to USD 7,496.623 million per annum*". On 9 October 2019, the Office of the US Trade Representative (hereinafter, USTR) published the *Notice of Determination and Action Pursuant to Section 301: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute* in the US Federal Register, which provides the additional duties on EU products and products of certain EU Member States (for a detailed case history, see *Trade Perspectives*, Issue No. 18 of 4 October 2019 and Issue No. 19 of 18 October 2019).

Importantly, there is no further recourse available to the decision of the arbitrator. Article 22.7 of the DSU provides that the parties are to "*accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration*". Also noteworthy is that, according to Article 22.8 of the DSU, the suspension of concessions or other obligations is only to be temporary and is only to be applied until such time as the measure found to be inconsistent with a covered agreement has been removed, or the respective WTO Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached. However, there is no specific time limit to the countermeasures, and all depends on the negotiations to be conducted between the EU and the US.

While the decision by the WTO arbitrator sets the maximum amount for countermeasures, the respective WTO Member is free to determine the implementation, namely the goods subject to additional tariffs, as well as the specific tariff rates that are applied. Originally, on 9 October 2019, the US Administration had published its '*Notice of Determination and Action Pursuant to Section 301: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute*', which provided the definitive list of products in the US Federal Register subject of additional tariffs. As noted above, the additional tariffs apply since 18 October 2019 and amount to an additional 25%, except for new airplanes and other new aircraft from France, Germany, Spain, or the UK, for which an additional duty of 10% applies. The US is also imposing additional tariffs of 25% on a large number of agricultural products from all EU Member States, such as citrus fruits, yoghurt, butter and butter substitutes, pork ham, and a multitude of cheeses, such as Cheddar,

Parmigiano Reggiano, Provolone, etc., as well as on a number of industrial goods (see *Trade Perspectives*, Issue No. 19 of 18 October 2019).

Importantly, already in October 2019, the USTR stated that it had "*the authority to increase the tariffs at any time, or change the products affected*" including "*the authority to apply a 100 percent tariff on affected products*". The USTR's intention to revisit and revise the list of goods that are subject to additional duties is known as '*carousel retaliation*', referring to a regular rotation of goods subject to tariffs and designed to penalise different sectors and put pressure on several key constituencies, so as to trigger their political and commercial actions within the incompliant WTO Member (in this case, the EU) and, ultimately, achieve compliance.

The legal basis of the USTR's authority to revise a retaliation list is *Section 306 Monitoring of Foreign Compliance* of the *Trade Act of 1974.* Section 306(2)(B) thereof notes that the USTR "*shall periodically revise the list or action to affect other goods of the country or countries that have failed to implement the recommendation*". The review and possible revision of the list of affected goods follows a specific schedule. According to Section 306(2)(C) of the *Trade Act of 1974*, the USTR is required to review the retaliation list, "*in whole or in part to affect other goods of the subject country or countries*", after 120 days from the date when the action was taken for the first time and revise the list every 180 days thereafter. Finally, Section 306(d) requires the USTR to "*provide an opportunity for the presentation of views by interested persons*".

Following these rules, on 12 December 2019, the USTR published the '*Review of Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute*' and requested "*comments with respect to whether products listed in Annex I should be removed from the list or remain on the list; whether the rate of additional duty on specific products should be increased up to a level of 100 percent; whether additional duties should be imposed on specific products listed in Annex II; and on the rate of additional duty to be applied to products drawn from Annex II*". The deadline to submit comments to the USTR lapsed on 13 January 2020 at 23:59 US Eastern Time. In its revision, the USTR is to "*act in a manner that is most likely to result in the country or countries implementing the recommendations adopted in the dispute settlement proceeding or in achieving a mutually satisfactory solution to the issue that gave rise to the dispute settlement proceeding*".

Annex II of the notice lists the additional goods that are being considered for tariffs. The list includes, *inter alia*, certain fishery products, certain cheeses and dairy products, sparkling wine, wine, certain textile products, sweet biscuits, waffles and wafers, certain fruit and vegetable products (such as olives). While the USTR has not given any indication of which products would be subject to additional tariffs, certain industries have been very vocal in communicating their interests. A key sector that may be affected is the sector of wine and spirits. Importantly, wines from Italy and Portugal, as well as Irish and Scotch whiskies from Ireland and the UK are being considered as part of the new proposed list. The US *National Association of Wine Retailers*, as well as the *Wine Institute*, a 1,000-member Californian wine industry association, strongly opposed the implementation of additional tariffs on wine. On the one hand, an increase on tariffs on wine imports from the EU is expected to lead to significant price increases for US consumers. Replacing EU wine imports with domestic wine is also not (yet) an option, as the US wine industry would need at least another ten years to develop in terms of production quantity before it could be in a position to begin replacing wine imports from the EU. On the other hand, US wine growers are concerned that, if EU wine is targeted by the US, the EU could also target US wines when it considers additional tariffs on US products. The EU is still the most important export market for US wine with an export value of USD 469 million in 2018. On the EU side, EU confectionary producers are also concerned regarding their business activities.

While no recourse is available against the decision of the arbitrator under Article 22.7 of the DSU, the EU has, in 2018, initiated, for the second time, compliance proceedings pursuant to Article 21.5 of the DSU "*with respect to a disagreement regarding the existence or consistency with the WTO covered agreements of measures taken by the European Union to comply with*

the DSB's recommendations and rulings in this dispute". On 2 December 2019, the WTO panel circulated its report and, overall, concluded that the EU and certain EU Member States "*failed to implement the recommendations and rulings of the DSB to bring its measures into conformity with its obligations (…) and (…) that the adopted recommendations and rulings remained operative*". On 11 December 2019, the EU notified the DSB of its intention to appeal certain findings contained in the panel report. Despite the decision by the DSB of 14 October 2019, the case has still not been fully closed.

At the DSB meeting on 14 October 2019, the EU pointed out that, in the parallel *United States – Measures Affecting Trade in Large Civil Aircraft – Second Complaint*, the dispute relating to *Boeing* aircraft initiated by the EU, it "*had obtained findings*" that the US was "*out of compliance with respect to both Washington State tax subsidies and FSC tax breaks*". The EU is currently also pursuing a decision by a WTO arbitrator regarding the *Boeing* dispute and noted its expectation that the same principles applied by the arbitrator in the *Airbus* dispute would also be applied in the *Boeing* dispute. Finally, the EU warned "*that applying countermeasures now would be short-sighted*", since "*both the EU and the US have been found at fault by the WTO dispute settlement system, and the mutual imposition of countermeasures would only harm global trade and the broader aviation industry*". The US did state that it remained "*the US preference to find a negotiated outcome with the EU that ends all WTO-inconsistent subsidies*", but noted that a negotiated outcome could only happen "*if the EU genuinely terminates the benefits to Airbus from current subsidies and ensures that subsidies to Airbus cannot be revived under another name or another mechanism*". In January 2020, in view of the conclusion of the comment period in the US, the EU's Commissioner for Trade, Phil Hogan, reiterated his hope for a negotiated solution in view of the anticipated decision in the *Boeing* case. In 2012, the EU had estimated that countermeasures could amount to around EUR 12 billion, though the final amount is expected to lower. In order to be prepared, the European Commission has already prepared and published a list of US exports to the EU market of a total value of around USD 20 billion that could be subjected to additional tariffs (see *Trade Perspectives*, Issue No. 13 of 28 June 2019).

A further development to watch is USTR's investigation under Section 301 of the Trade Act of 1974, which, in December 2019, concluded that France's Digital Services Tax (DST) "*discriminates against U.S. companies, is inconsistent with prevailing principles of international tax policy, and is unusually burdensome for affected U.S. companies*". In this context, the USTR had published a notice in the US Federal Register, opening a comment period until 6 January 2020. Importantly, the USTR also sought comments regarding the potential imposition of additional fees or restrictions on French services and a list of French products potentially subject to additional duties, which includes 63 tariff subheadings with an approximate trade value of USD 2.4 billion clearly targeting certain French specialities, such as cheese and sparkling wine (*i.e.*, *Champagne*). Reportedly, the USTR is currently considering whether or not to also initiate Section 301 investigations into the digital services taxes of Austria, Italy, and Turkey.

Considering the timeframes provided in US legislation, the review has to take place within 120 days from 18 October 2019 (*i.e.*, until 15 February 2020). This provides the USTR with about one month from the now elapsed deadline for comments and to establish a potentially revised list of products. The next review is then to follow 180 days later, to be concluded by 13 August 2020. Businesses on both sides of the Atlantic should continue to closely monitor the developments in the *Airbus* and *Boeing* cases and the related actions by the US and the EU, which will significantly affect trade and supply chains until a solution is found. Businesses should assess the impact that the likely upcoming EU '*retaliatory duties*' on US products, as well as future iterations of the US '*carousel*' retaliation, would have on their products and put in place the necessary measures and advocacy initiatives to minimise the negative commercial effects.

A focus on enforcement: The European Commission proposes to amend the Enforcement Regulation and creates the post of Chief Trade Enforcement Officer

On 12 December 2019, the European Commission (hereinafter, Commission) presented its '*Proposal for a Regulation of the European Parliament and of the Council amending the (EU) No 654/2014 of the European Parliament and of the Council concerning the exercise of the Union's rights for the application and enforcement of international trade rules*'. The objective of the proposal is to protect the EU's interests under international trade agreements despite the crisis affecting the dispute settlement system of the World Trade Organization (hereinafter, WTO). The proposed amendment would extend the scope of the EU's existing *Enforcement Regulation* to allow for action in a situation of dispute settlement procedures being blocked. Also, on 12 December 2019, the Commission officially created the position of Chief Trade Enforcement Officer. These developments are in line with the objective of the new Commission, led by President *Ursula von der Leyen*, to focus on the implementation and enforcement of trade agreements.

In the past twenty years, the global focus of trade negotiations has increasingly shifted from the multilateral level within the WTO to regional, bilateral, and region-to-region trade agreements. Perhaps somewhat reluctantly at first, given its traditional preference for the multilateral approach at the WTO, the EU then fully embraced this trend. In its 2015 '*Trade for all – Towards a more responsible trade and investment policy*' strategy, the previous Commission had noted the importance of the implementation of EU's free trade agreements (hereinafter, FTAs) to ensure that parties to such agreements take full advantage thereof. The Commission's 2015 strategy noted that implementation was a responsibility not only of the Commission, but also of EU Member States, the European Parliament, and of external stakeholders. To improve implementation and enforcement, the Commission committed to "*report annually on the implementation of the most significant FTAs and give more in-depth ex-post analysis of the effectiveness of EU trade agreements, looking at sectors and Member States and the impact on the economies of partner countries in selected cases*". The most recent '*Report on Implementation of Free Trade Agreements*', was published on 14 October 2019, covering the implementation of the EU's FTAs for the period from 1 January to 31 December 2018. The report notes that, despite the difficult global economic climate, the EU's preferential trade network had increased (see *Trade Perspectives*, Issue No. 21 of 15 November 2019).

In her mission letter to the new Commissioner for Trade *Phil Hogan*, the President of the Commission *Ursula von der Leyen* puts an emphasis on the importance of implementation and enforcement of EU law through trade. The mission letter states that "*Europe's place is at the heart of the rules-based multilateral system*" and that, as a consequence, the EU must also be "*at the heart of efforts to update and upgrade it for the modern economy*". Therefore, "*open and fair trade must be based on global rules that are effective, enforceable and create a level playing field for all*'. According to the mission letter, one of the elements to achieve such level playing field is the strengthening of the EU '*trade toolbox*', which includes an update of the EU Enforcement Regulation.

On 12 December 2019, the Commission published its proposal to amend '*Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization*' (hereinafter, *Enforcement Regulation*). The EU's *Enforcement Regulation* had introduced a new horizontal framework, which enhanced the EU's ability to enforce its interests in the international trading system and to take measures against third countries that violate obligations agreed in multilateral and bilateral trade agreements. Article 3 of the current *Enforcement Regulation*, on the '*Scope*' of the Regulation, provides that the EU has the right to apply countermeasures: 1) Following a binding adjudication of a trade

dispute under the WTO Dispute Settlement Understanding or under other international trade agreements, in favour of the EU; 2) For EU rebalancing measures in reaction to a safeguard measure imposed by another country as foreseen under applicable international trade rules; or 3) When a WTO Member modifies or withdraws its concessions under Article XXVIII of the GATT 1994 and no compensatory adjustment is agreed. Notably, the current *Enforcement Regulation* provides that the EU has the right to consider countermeasures in case that an illegal measure is maintained by a third country following a binding adjudication of a trade dispute, in favour of the EU. However, as the report accompanying the proposal states, this is only possible "*on the basis of successful completion of dispute settlement procedures with regard to the third countries measures*".

The proposed amendments to the *Enforcement Regulation* intend to protect EU interests under international trade agreements "*in situations when third countries adopt illegal measures and simultaneously block a dispute settlement process*". In particular, the proposed amendments respond to the current impairment of the WTO Appellate Body, which impedes the EU and other WTO Members from achieving binding adjudication in cases submitted to WTO dispute settlement. The Commission's proposal to amend Article 3 of the *Enforcement Regulation* would extend its scope to allow the EU to act in situations of dispute settlement procedures that are blocked. The amendments focus on two major situations: First, in the event the EU has succeeded in obtaining a favourable ruling, in whole or in part, from a WTO dispute settlement panel, but the process is blocked because the respondent decided to appeal the panel decision despite the Appellate Body being unable to take on the case. In this situation, unless the EU and the respondent have previously agreed to *interim* appeal arbitration on the basis of Article 25 of the WTO Dispute Settlement Understanding (on such *interim* appeal arbitration agreements, see *Trade Perspectives*, Issue No. 20 of 1 November 2019), there would be no biding outcome and, therefore, the EU would not be able to take any measures under the *Enforcement Regulation*. Secondly, the amended *Enforcement Regulation* would provide the EU with the ability to take measures "*in trade disputes relating to other international trade agreements, including regional or bilateral agreements, if adjudication is not possible because the third country is not taking the steps that are necessary for a dispute settlement procedure to function*". For instance, this refers to cases in which a third country fails to appoint an arbitrator and when there is no fall-back mechanism for arbitration provided to resolve the dispute. The proposal also provides for Article 10, on the '*Review*' of the *Enforcement Regulation,* to be amended, requiring the Commission to review the scope of the *Enforcement Regulation* "*by 1 March 2025 at the latest*" and "*taking into account in particular the amendments to the scope*".

The Commission's proposal will now follow the ordinary legislative procedure, which means that proposals must be discussed and adopted by the European Parliament and the Council of the EU (hereinafter, Council). The Commission is hoping that the legislative process could be concluded by mid-2020 because of the urgency of the matter for the EU in view of the impairment of the WTO Appellate Body.

The mission letter to the new Commissioner for Trade *Phil Hogan* also states that a Chief Trade Enforcement Officer would be appointed by the College of Commissioners. The Chief Trade Enforcement Officer would work under the direction and guidance of Commissioner Hogan and his or her main task would be to monitor and improve the compliance of the various trade agreements, including their respective chapters on trade and sustainable development. Additionally, the Chief Trade Enforcement Officer will be supposed to report on the state-of-play of its monitoring and shall keep the European Parliament and the Council well informed of all developments. On 12 December 2019, the Commission announced that it had officially created the post of the Chief Trade Enforcement Officer, though details of the functions and competences remain unclear. The Commission merely notes that it expects the post to be filled "*in early 2020*".

The Commission's proposal to amend the *Enforcement Regulation,* and the creation of the position of Chief Trade Enforcement Officer, follow the political guidelines of President *von der Leyen* to focus on the implementation and enforcement of EU trade agreements. The EU is

increasing its focus on enforcing its partners' commitments in its various multilateral, regional, and bilateral trade agreements. Interested stakeholders in the EU and in the EU's trading partners should closely monitor the developments on these matters. Businesses with commercial interests within the EU or its trading partners should carefully assess the relevant rules and enforcement tools that are available.

Germany debates the increase of the value-added tax or the introduction of a '*sin*' tax on meat

In an interview on 6 January in the *Neue Osnabrücker Zeitung* newspaper, the Minister for Food, Agriculture and Consumer Protection of the German Federal State of Lower Saxony, *Barbara Otte-Kinast* proposed the introduction of a special tax on meat, in order to generate resources for animal welfare. In Germany, meat is relatively cheap for consumers. Already in August 2019, politicians from a number of German political parties had proposed increasing the value added tax (hereinafter, VAT) on meat to the standard rate of 19%. Currently, like most foodstuffs, meat in Germany is subject to a reduced VAT rate of 7%. In general, the issue of introducing a '*meat tax*' is something that animal welfare and climate change activists have been demanding for years. No EU Member State has so far introduced a '*meat tax*'.

Over the past years, the consumption of meat from intensive, industrial livestock farming is increasingly being recognised as a serious problem, with vegetarian, vegan, and flexitarian diets (*i.e.*, a semi-vegetarian diet centred around plant foods and with the occasional inclusion of meat) gaining traction. In 2019, the Food and Agriculture Organization of the United Nations (FAO) confirmed that the livestock sector is responsible for 14.5% of total greenhouse gas emissions, while a large area of the world's cultivated land is used to produce the fodder required to feed these animals, mainly soy and maize, and also a large amount of available freshwater is used for livestock farming. Scientists consider the meat industry to be one of the highest emitters of CO_2, a key contributor to climate change. To combat climate change, there are calls to reduce meat consumption. The study *Options for keeping the food system within environmental limits* published in the journal *Nature* in October 2018 found that Western countries should, *inter alia*, reduce beef consumption by as much as 90%. The study's authors called for a swift move to a flexitarian diet in order to keep climate change under the limit of 2 degrees Celsius.

With respect to animal welfare, the debate is whether '*meat taxes*' and resulting higher meat prices should be directly used for better animal husbandry or should primarily reduce meat consumption for environmental reasons. The German politicians that proposed the '*meat tax*' suggested using the additional funds raised by the tax increase to support animal welfare at a time when the meat industry is coming under increased scrutiny for how it treats livestock. The German Federal Minister of Food and Agriculture *Julia Klöckner* has repeatedly referred to the new animal welfare label, which was adopted by the Federal Government in September 2019. With respect to the idea of a '*meat tax*', the Minister reportedly said that "*the proposals to tax meat highlight the importance of supporting livestock farmers amid declining meat consumption, but it is not necessary to raise the VAT on meat to do so*".

The Value Added Tax, or VAT, regulated in the EU by *Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax*, is a general consumption tax assessed on the value added to goods and services. VAT applies to basically all goods and services that are bought and sold for use or consumption in the EU. Therefore, goods which are sold for export, or services that are sold to customers outside of the EU, are not subject to VAT. On the other hand, imports are taxed so as to keep the system fair for EU producers, allowing them to compete on equal terms on the EU market with suppliers situated outside of the EU. Article 97 of *Directive 2006/112/EC* only requires that the standard VAT rate applied in EU Member States be at least 15%. According to Article 99 of *Directive 2006/112/EC*, a reduced rate may be established for the supply of goods and services referred to in an exhaustive list and must amount to at least 5%. The actual VAT rates applied vary among EU

Member States and depending on the type of products. In addition, certain EU Member States have retained other rates for specific products, such as publications. A percentage coming from the harmonised VAT base of each EU Member State goes into the EU budget. Recital 8 of *Directive 2006/112/EC* states that, pursuant to *Council Decision 2000/597/EC, Euratom, of 29 September 2000 on the system of the EU's own resources* (in the meantime repealed and replaced by Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the EU's own resources), the budget of the EU is to be financed, without prejudice to other revenue, wholly from the EU's own resources, including "*those accruing from VAT and obtained through the application of a uniform rate of tax to bases of assessment determined in a uniform manner*".

There are also arguments against raising the VAT rate for meat. Importantly, the VAT revenues cannot be directly destined for animal welfare measures, as in Germany they are included in the general federal budget. In fact, Minister *Otte-Kinast* spoke out against an increase of the VAT for meat and, instead, showed support for a separate '*meat tax*' instead. "*The money has to reach the farmer*", she was quoted as saying. In the case of a special tax on meat, the revenue could be used in a targeted manner to ensure better animal welfare in the stables, for example by building new stables with more space. Minister *Otte-Kinast* proposed a special tax on meat.

Such '*meat tax*' may be defined as a surcharge placed on meat with the aim of decreasing its consumption. Low prices for meat in supermarkets mask meat's hidden costs. Research shows that meat is often being sold to consumers at just a fraction of what it would cost if it accurately reflected the true production and environmental costs. A study ("*How much is the dish?" – Was kosten uns Lebensmittel wirklich?"*) by researchers at the German University of Augsburg stated, in September 2018, that supermarket prices for meat were misleading and hid the huge secondary costs arising from the environmental impact of meat production. Quantifying and monetising the environmental impact of meat production in Germany, the researchers found that conventionally farmed meat cost three times the prices that consumers actually pay. That is an additional cost of 196%. When the meat originates from organic production, those hidden costs amount to 82% more than the supermarket price. Such additional costs were calculated by quantifying three factors in animal farming: pollution resulting from nitrogen fertiliser use, greenhouse gas emissions, and energy usage.

Many nations have established '*sin taxes*' for products deemed harmful to society, such as alcohol and tobacco, so should the meat price not also reflect its true environmental cost? This is not an entirely new idea - some theorists, starting with Arthur Pigou, a 20th century English economist, have long presented the arguments for imposing special taxes on goods and services whose prices do not reflect the true social cost of their consumption (see for more details: Fat Taxes in the European Union between Fiscal Austerity and the Fight Against Obesity). Examples of so-called '*Pigouvian*' taxes are duties on tobacco products, alcohol, gambling, and environmental emissions.

No EU Member State currently appears to impose a '*meat tax*', although in Sweden and Denmark a climate tax on meat and a tax on red meat sales, respectively, have been debated for years. In the UK, Member of Parliament *Caroline Lucas* stated, in 2019, that the Parliament must "*seriously consider*" levying a tax on meat to reduce greenhouse gas emissions and help to render the farming industry carbon neutral. Reportedly, according to Lucas, a meat tax in the UK could be offset for more sustainable meat producers, such as organic livestock farmers, through more financial support for sustainable agricultural schemes, prioritising "*more humane and human-scale methods of livestock farming, together with support for farmers to transition to less livestock*".

A possible German '*meat tax*' and similar measures that might be introduced in individual EU Member States in the future appear to be indirect internal taxes that are not harmonised at the EU level. In principle, EU law allows EU Member States to introduce and maintain non-harmonised internal taxes and freely establish their modalities. However, such taxes must comply with the Treaty on the Functioning of the European Union (TFEU), in particular with

Article 110 thereof, which prohibits internal discriminatory taxation, direct or indirect, on products from other EU Member States, in excess of that imposed on similar domestic products. The same provision also prevents EU Member States from imposing on products from other EU Member States any internal taxation "*of such a nature so as to afford indirect protection to other products*". It would, therefore, need to be carefully analysed whether these taxes create a higher tax burden on imported products.

Meat producers are certainly not in favour of such tax. *Westfleisch*, one of Germany's largest meat producers, reportedly said that it sees "*such an artificial price rise extremely critically*", adding that "*it benefits neither the consumer, nor the environment, nor animal welfare*", and that "*Experience from abroad shows that despite the introduction of penalty taxes, consumption of affected products hasn't changed considerably*". *Westfleisch* reportedly believes that disseminating information and education for the generations to come would constitute a "*more promising way to a sustainable change in meat consumption, nutritional awareness and possibly positive consequences for the climate*".

Taxing meat (or food in general) may also affect people with lower incomes hardest. It may be better to establish incentives for farmers to take animal welfare measures and to produce more quality meat, which could be sold at higher prices and should be consumed in lower quantities. Although in the past the political will to introduce a special '*sin*' tax for meat or to raise the VAT rate for meat was missing, such a measure now looks poised to be further discussed in view of animal welfare and/or climate concerns. All interested stakeholders should closely monitor any development on the matter of meat taxes, be it in Germany or elsewhere in the EU.

Recently Adopted EU Legislation

Customs Law

- *Information concerning the entry into force of the Agreement in the form of an exchange of letters between the European Union and Ukraine amending the trade preferences for poultry meat and poultry meat preparations provided for by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part*

Trade Remedies

- *Commission Implementing Regulation (EU) 2020/39 of 16 January 2020 imposing a definitive anti-dumping duty on imports of peroxosulphates (persulphates) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*

- *Commission Implementing Regulation (EU) 2020/35 of 15 January 2020 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products*

Food and Agricultural Law

- *Commission Implementing Regulation (EU) 2020/25 of 13 January 2020 amending and correcting Regulation (EC) No 1235/2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries*

- *Commission Implementing Regulation (EU) 2020/24 of 13 January 2020 authorising an extension of use of chia seeds (Salvia hispanica) as a novel food and the change of the conditions of use and the specific labelling requirements of chia seeds (Salvia hispanica) under Regulation (EU) 2015/2283 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) 2017/2470*

- *Commission Implementing Regulation (EU) 2020/16 of 10 January 2020 authorising the placing on the market of nicotinamide riboside chloride as a novel food under Regulation (EU) 2015/2283 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) 2017/2470*

- *Commission Implementing Regulation (EU) 2020/18 of 10 January 2020 concerning the non-renewal of the approval of the active substance chlorpyrifos, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011*

- *Commission Implementing Regulation (EU) 2020/17 of 10 January 2020 concerning the non-renewal of the approval of the active substance chlorpyrifos-methyl, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011*

Other

- *Commission Delegated Regulation (EU) 2020/11 of 29 October 2019 amending Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures as regards information relating to emergency health response*

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