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The European Commission is moving its trade agenda forward, despite the impediments of the *Covid-19* pandemic

On 28 April 2020, the EU and Mexico announced the conclusion of the revised EU-Mexico Global Agreement. The conclusion of the EU-Mexico Global Agreement negotiations and the progress made in other EU trade negotiations, such as the trade negotiations between the EU and the UK and between the EU and New Zealand, demonstrate that the EU is succeeding in moving its trade agenda forward despite the impediments of the *Covid-19* pandemic.

The influence of the Covid-19 pandemic on trade negotiations

Due to the developments regarding the *Covid-19* pandemic, various ongoing trade negotiations have been suspended and rescheduled. However, over the past few weeks, negotiations have largely resumed and were held via video conferences. The European Commissioner for Trade, *Phil Hogan*, stated that, particularly in this period of crisis, it was the EU's network of trade agreements that would come to the benefit of EU exporters and allow suppliers to diversify their value chains rather than only relying on domestic production. From 30 March to 9 April 2020, the seventh round of negotiations of the EU-New Zealand Free Trade Agreement (hereinafter, FTA) was held via video conference. Both parties confirmed their commitment "*to intensify efforts towards a swift conclusion of the negotiations*". The 7th round of negotiations of the EU-Australia FTA will take place from 11 to 12 May 2020. EU-UK trade negotiations also resumed in this virtual format. However, reports indicate that the tenth round of the negotiations for the EU-Indonesia Comprehensive Economic Partnership Agreement (CEPA) may not resume until the negotiating teams can meet in person.

The revised EU-Mexico Global Agreement can finally be concluded

The conclusion of negotiations for the EU-Mexico Global Agreement is a significant milestone in the EU trade agenda. The trade part of the modernised agreement will not only increase market access, but will also improve rules on sustainable development, and include a number of important novelties, such as a chapter on energy and raw materials, a chapter on cooperation on animal welfare and antimicrobial resistance, an anti-corruption chapter, and a chapter on digital trade.

The revised trade part of the EU-Mexico Global Agreement was already officially concluded in 2018 and, on 21 April 2018, the EU and Mexico published their '*Agreement in principle*' on the terms to update and modernise the trade part of their *Economic Partnership, Political*

Coordination and Cooperation Agreement (known as the Global Agreement), which has been disciplining trade between the two Parties since 2000. However, some issues were still pending, notably the issue of market access to public procurement at the sub-federal level. On 28 April 2020, European Commissioner Hogan and the Mexican Minister of Economy Graciela Marquez finally agreed, during a phone call, “on the exact scope of the reciprocal opening of public procurement markets and a high level of predictability and transparency in public procurement processes”. The provisional text of the agreement on public procurement is not publicly available yet, but is supposed to be made public shortly.

The revised EU-Mexico Global Agreement provides that almost all trade in goods between the EU and Mexico will eventually be duty-free, including in the agricultural sector, which had been mostly excluded from the agreement currently in force. Most tariffs will be eliminated once the revised agreement enters into force, while certain tariffs for sensitive products, such as for apples and peaches, will be phased out within a period of a maximum of ten years following entry into force. Additionally, both Parties agreed to simplify customs procedures in sectors such as pharmaceuticals, machinery, and transport equipment, thereby significantly facilitating trade in those sectors. Furthermore, the EU agreed for the first time on issues concerning investment protection with a Latin American country (see *Trade Perspectives*, Issue No. 9 of 4 May 2018).

The legal revision of the EU-Mexico Global Agreement is being conducted. Once finalised, the agreement will be translated, and the European Commission will then send it for signature and conclusion to the Council of the EU and to the European Parliament.

The increasing importance of regulating digital trade in trade agreements

The revised EU-Mexico Global Agreement includes a new chapter on digital trade. Digital trade is rapidly developing globally, as more and more business is conducted electronically. In this context, on 2 February 2020, the EU published its Communications ‘*A European strategy for data*’, which sets out to create a “*genuine single market for data, open to data from across the world*”, in which data is secure and businesses have “*easy access to an almost infinite amount of high-quality industrial data*” (see *Trade Perspectives*, Issue No. 4 of 28 February 2020).

The new chapter on digital trade provides rules on electronic commerce and electronic transactions. More specifically, it provides that neither Party may impose customs duties on electronic transmissions “*between a person of one Party and a person of another Party*”. It introduces rules aimed at allowing businesses to operate online with certainty and provides protection for online consumers. The chapter on digital trade provides legal certainty by guaranteeing that electronic contracts, signatures, or digital certificates, are legally valid. Finally, source codes are being protected, mandating that “*no Party may require the transfer of, or access to, source code of software owned by a juridical or natural person of the other Party*”. The chapter on digital trade also contains a review clause on data flows, requiring the Parties to “*reassess within three years of the date of entry into force of this Agreement the need for inclusion of provisions on the free flow of data into this Agreement*”. The inclusion of the chapter on digital trade in the EU-Mexico Global Agreement underlines the increasing relevance of the digital sector and such provisions are poised to become standard in future EU trade agreements.

Limited progress in EU-UK negotiations

Since early March 2020, the EU and the UK have been negotiating the terms and conditions of their future trade relations, intended to come into place once the current transition period following ‘*Brexit*’ lapses at the end of this year. The second round of negotiations was officially scheduled from 18 to 20 March 2020, but had to be cancelled due to the *Covid-19* pandemic. From 20 to 24 April 2020, the round was finally held via video conferences. On 24 April 2020, the EU’s Chief Negotiator and Head of the Task Force for Relations with the UK, Michel Barnier, pointed out in a [press statement](#) that there were “*four areas in particular, on which the progress was disappointing*”: 1) Level playing field; 2) Overall governance of the EU-UK

partnership; 3) Judiciary cooperation in criminal matters; and 4) Fisheries. He stated that it was necessary to make substantial progress soon and that both parties must “*apply realism*” ahead of the approaching deadline for an extension of the current transition period.

At the same time, the UK stated that negotiations were constructive and that some progress had been made, for instance in the area of services. The EU and the UK have exchanged initial text proposals, but the UK text proposals have so far been kept confidential. The UK is confident that an agreement would be reached by the end of the year, though there is no evidence that a substantial trade agreement has ever been concluded in less than a year. The UK has the possibility to ask for an extension of the transition period by 30 June 2020, but has repeatedly stated that it was not its intention to seek such an extension. The third round of negotiations is scheduled to take place via video conferences from 11 to 15 May 2020.

The way forward

As EU trade negotiations start moving forward again, it is important to note that many of the coming rounds of trade negotiation, as well as stakeholder meetings, will continue to take place via video conferences and through digital means. This will likely slow down negotiations and might also decrease contact between stakeholders and negotiators. All traders and stakeholders should get comfortable with the current means of interaction and continue engaging with negotiators in order to have their interests reflected in the various negotiations and agreements and.

Covid-19 pandemic: Trade-related measures adopted by Governments in the Southeast Asia Region and the need for regional and global cooperation

Due to the *Covid-19* pandemic, trade in certain medical products can be considered as “*critical*”, particularly in light of the shortages of many such items. The *Covid-19* pandemic also appears to pose a risk to food security, notably as a consequence to disruptions in the global food supply chains that potentially affect food production and affordability. As policymakers around the globe increasingly impose trade-related measures to mitigate the spread of the virus, the overall number of such measures is growing rapidly. In response to this trend, the WTO Secretariat has introduced and is maintaining a [list of provisional measures](#) imposed by WTO Members with respect to *Covid-19*. As of 4 May 2020, the non-exhaustive list contained 158 *Covid-19*-related measures adopted by WTO Members. The list shows that WTO Members are primarily issuing temporary trade measures, some of which aim at restricting exports of vital medical supplies, while others aim at liberalising imports of vital medical supplies.

A growing number of exports restrictions and prohibitions

A recent [report](#) by the WTO Secretariat shows that 80 countries and customs territories have introduced export prohibitions or restrictions covering a wide range of products including facemasks, shields, personal protective equipment, and foodstuffs. While Article XI of the General Agreement on Tariffs and Trade (hereinafter, GATT) generally prohibits export bans and restrictions, Article XI:2(a) of the GATT allows WTO Members to apply such measures temporarily “*to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting Member*”. Although export prohibitions and restrictions may, in the short run, lead to reduced domestic prices of goods and increase domestic availability, the International Monetary Fund’s (IMF) Managing Director *Kristalina Georgieva* and WTO Director-General *Roberto Azevêdo*, on 24 April 2020, urged countries to refrain from imposing export and other restrictions on essential medical supplies and food commodities, given the destabilising and disruptive effects that they have, threatening not just trade, but also the health security of many countries.

On the list compiled by the WTO Secretariat, five of the ten Member States of the Association of Southeast Asian Nations (hereinafter, ASEAN) have notified *Covid-19* related measures to the WTO, namely Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Out of these five countries, Indonesia, Malaysia, and Thailand appear to have adopted export restrictions or prohibitions, while the Philippines and Singapore appear to have opted for measures aimed at facilitating the movement of essential goods.

Indonesia, on 18 March 2020, enacted a provisional export ban through the issuance of *Ministry of Trade (MoT) Regulations No. 23/2020* and *No. 31/2020*. Under these MOT regulations, businesses are temporarily prohibited from exporting medical products, including antiseptics, raw materials for masks, and personal protective equipment, from 18 March until 30 June 2020. On 20 March 2020, Malaysia adopted a temporary export ban on face masks pursuant to *Customs (Prohibition of Exports) (Amendment) (No.2) Order 2020*, which became effective on 20 March 2020 and applies for as long as necessary. Similarly, Thailand has adopted a temporary export ban on, *inter alia*, surgical masks, face-masks, smoke or toxic substances used for safety devices, which became effective on 5 February 2020 and is intended to remain in force for one year. Thailand also appears to be the first ASEAN Member State that imposed an export ban on food commodities, notably bird eggs of fowls of the species *Gallus Domesticus*, originally effective from 26 March 2020 to 1 April 2020 and then extended until 30 April 2020.

Import liberalisation of essential products needed to fight the Covid-19 pandemic

In addition to export restrictions and prohibitions, Governments around the world have (often in parallel) increasingly liberalised the importation of products essential to fight the *Covid-19* pandemic, typically by eliminating or reducing import duties, shortening customs-clearance processes, and streamlining licensing and approval requirements for the import of critical medical supplies.

Indonesia, for instance, has adopted three regulations that facilitate the importation of medical and food commodities. Firstly, Indonesia adopted *Ministry of Trade Regulation No. 28/2020*, which aims at facilitating the importation of medical equipment (*i.e.*, room air freshener with or without disinfectants, antiseptic products with or without soap, and medical protective clothing) and that is in force until June 2020. Import requirements for several medical products, namely the requirement to submit a Surveyor Report from the country of origin or port of loading and restrictions on the port of entry, have been temporarily waived. Secondly, through *Ministry of Finance Regulation No. 34/2020*, issued on 17 April 2020, Indonesia eliminated import duties and other taxes with respect to products considered essential in the response to the *Covid-19* pandemic, namely hand sanitisers, test kits, medication, and vitamins. Thirdly, with a measure not directly related to *Covid-19*, but rather to the need to keep the domestic food market adequately supplied and food prices stable at the time of *Ramadhan*, on the basis of *MoT Regulation No. 27 Year 2020* Indonesia has temporarily eliminated the applicable certification requirements for imports of onions and garlic from 18 March 2020 to 31 May 2020.

Other ASEAN Member States that have pursued a similar approach compared to Indonesia are Malaysia, the Philippines, Singapore, and Thailand. Malaysia adopted a measure that temporarily eliminates import tariffs on face masks, exempting registered manufacturers from import duties and sales tax from 23 March 2020, until a date to be decided by Malaysia's Ministry of Finance. Similar tax facilitation is provided for raw materials, including denatured ethyl alcohol, which became effective on 30 March 2020. Singapore adopted two measures: firstly, a relaxation of import licensing requirements for, *inter alia*, hand sanitisers, masks, and thermometers, for which importers are no longer required to obtain an importer's license, and secondly, the elimination of import tariffs and all other duties and charges on essential goods, including pharmaceutical and agricultural products. The Philippines, from 24 March 2020 to 23 May 2020, temporarily eliminated import tariffs and other taxes on qualified manufacturers and suppliers of, *inter alia*, medicines, medical equipment, and surgical equipment and supplies, while Thailand, from 24 March to 23 May 2020, has temporarily eliminated import tariffs and

other taxes on qualified manufacturers and suppliers of several medical products, *inter alia*, medicines and medical and surgical equipment.

The EU has already reduced its trade-restrictive measures

On 14 March 2020, the European Commission (hereinafter, Commission) had adopted *Commission Implementing Regulation (EU) 2020/402 of 14 March 2020 making the exportation of certain products subject to the production of an export authorisation*, temporarily restricting exports of “*personal protective equipment*” to destinations outside of the EU. This Implementing Regulation was adopted with the objective of ensuring the supply of “*personal protective equipment*” in the EU. *Commission Implementing Regulation (EU) 2020/402* applied until 25 April 2020 and, through *Commission Implementing Regulation (EU) 2020/568 of 23 April 2020 making the exportation of certain products subject to the production of an export authorisation*, the Commission narrowed down the export authorisation requirements to protective masks only and extended the geographical and humanitarian exemptions to the Western Balkans, as well as to Gibraltar and the territories of EU Member States excluded from the EU Customs Union. The new regulation applies since 26 April 2020 and is limited to a period of 30 days. According to the Commission, the category of protective masks is the only category for which an export authorisation is necessary in order to secure adequate supply to protect the health of EU citizens. In the spirit of international solidarity, Article 2(6) of *Implementing Regulation (EU) 2020/568* explicitly requires EU Member States to authorise exports of emergency supplies in the context of humanitarian aid and to process the relevant applications in an expedited manner.

The importance of regional and global cooperation to respond to the pandemic

In a webinar on the role of the WTO in responding to the *Covid-19* pandemic on 20 March 2020, WTO Deputy Director-General *Alan Wolff* emphasised the importance of global coordination to ensure adequate supply of medicines and medical products to affected countries. In a virtual meeting of the G20 Agriculture Ministers on 21 April 2020, WTO Director-General *Roberto Azevêdo* urged G20 leaders to keep international markets open for vital medical products and food, and highlighted that *Covid-19*-related trade measures should be “*targeted, proportionate, temporary, and transparent*”.

WTO Members have increasingly recognised the importance of regional and global cooperation. This has become evident by the introduction of several proposals on *Covid-19*, such as facilitating the movement of essential goods and sharing best practices for mitigating the spread of the pandemic. On 6 April 2020, nine countries, including ASEAN Member States Brunei Darussalam, Lao PDR, Myanmar and Singapore, issued a *Joint Ministerial Statement* affirming their commitment to keep supply chains open and connected. On 15 April 2020, Singapore and New Zealand published the *Declaration on Trade in Essential Goods for Combating the Covid-19 Pandemic* to ensure supply chain connectivity during the *Covid-19* pandemic and to facilitate trade. In another joint statement of 22 April 2020, the EU together with 21 further WTO Members, including Chile, Japan, New Zealand, the US, and Singapore, also pledged to ensure well-functioning global agricultural and agri-food supply chains. Most recently, on 30 April 2020, all ASEAN Member States also made commitments under the *ASEAN Declaration and Statements on Covid-19*, which include to prioritise ASEAN’s collective fight against *Covid-19*, to support reallocating existing available funds to facilitate cooperation against *Covid-19* and to refrain from actions that could have an adverse impact on food security within the region.

As new trade measures in response to the *Covid-19* pandemic are introduced by Governments almost every day, traders around the globe should closely monitor the related developments to adapt to the new conditions, mitigating the risk of disruptions, and taking advantage of trade facilitative measures.

Switzerland temporarily loosens food labelling rules to address the unavailability of certain ingredients and packaging materials due to Covid-19

Due to the Covid-19 pandemic, certain ingredients and packaging materials are not available for the food industry and have to be temporarily replaced. For this reason, the information on the packaging of certain foods no longer matches the content. In order to ensure the availability of these products and to prevent food waste, the Swiss Federal Council (*Bundesrat*) adopted on, 16 April 2020, an amendment to Switzerland's *Food and Consumer Goods Ordinance (Lebensmittel- und Gebrauchsgegenständeverordnung)* of 16 December 2016. The amendment entered into force immediately and applies for six months.

The new rules temporarily permit food information that does not match the actual properties of the product

The new Article 12(1)bis of the *Food and Consumer Goods Ordinance* provides that "Information on food may differ from the facts if: a. the factually differing statement is demonstrably attributable to supply shortages as a result of the COVID 19 pandemic; b. the different information is not relevant for the protection of the health of consumers, in particular with regard to ingredients that can trigger allergies or other undesirable reactions; and c. the food is provided with a red, round adhesive that is easily recognisable for the consumer, which indicates "correct declaration under: ..." followed by an internet address at which it is easy to find which information provided on the food deviates from the facts and why". The new Article 95a of the *Food and Consumer Goods Ordinance* states that the amendment applies for a period of six months from the entry into force (*i.e.*, until 16 October 2020) and that, after that date, these changes will no longer apply.

The new provision aims at: 1) Securing the supply of food that is affected by supply shortages due to the Covid-19 pandemic; 2) Preventing panic purchases by consumers; and 3) Preventing unnecessary waste of food that is labelled incorrectly.

Strict conditions for deviations from the actual food information

A condition for the deviations from the actual food information is that the affected food is marked with a red sticker. This sticker must point to a website on which the actual properties (*i.e.*, composition, origin of the ingredients, production method) of the food and the reason for the deviation are provided. Finally, such temporary exceptions are only permitted if they do not endanger the health of consumers, for instance in the case of ingredients that can cause allergies or other undesirable reactions, nutrition and health claims, the use-by date of, and warning labels.

The Swiss food industry has called for temporary measures

The amendments come after the Federation of Swiss Food Industries (*Foederation der Schweizerischen Nahrungsmittel-Industrien*, fial) informed Switzerland's Federal Office for Food Safety and Veterinary Matters (*Bundesamt für Lebensmittelsicherheit und Veterinärwesen*, hereinafter, BLV) that certain ingredients or packaging materials may not be available for a relatively long period of time because of delivery bottlenecks due to the Covid-19 pandemic and would need to be replaced by other ingredients and packaging materials. Short-term re-labelling of products and packaging is complex and often not feasible within short deadlines. This can lead to the information on the packaging no longer matching the actual properties of a food. According to applicable law, such food may not be sold as food information must correspond to the facts and must not be deceptive to consumers.

Explanations to the amendment published by the BVL provide examples of the food in question, where the information on the packaging may temporarily not match the actual properties (in terms of composition, origin of the ingredients, etc.) due to the Covid-19 pandemic and the related supply shortages. Examples include "a ready-made pizza, usually

made with sea salt, in which normal salt is used due to the unavailability of sea salt” or “if the cardboard packaging of a conventional frozen pizza Gorgonzola is no longer available and instead of that the cardboard packaging for organic pizza Gorgonzola is used”. Consumers still interested in buying the food can, according to the explanations, use their mobile phone to clarify “whether they want to accept the existing deviations before making a purchase decision” by accessing the information provided on the website indicated on the red label and “those who do not have a mobile phone can avoid the products in question”.

Japan also temporarily relaxed its strict food labelling regulations

At the international level, on 23 April 2020, it was reported that Japan had also temporarily relaxed its strict food labelling regulations. In a statement released jointly by Japan’s Ministry of Agriculture, Forestry and Fisheries and the Ministry of Health, Labour and Welfare, Japan’s Consumer Affairs Agency announced that the enforcement of its strict food labelling regulations would temporarily be relaxed in order to allow for food business operators to adjust to the situation and to make adjustments to production processes or raw materials in their production chains as a result of the *Covid-19* pandemic. Regarding the labelling of food ingredients and raw materials, any discrepancies between the label and the actual ingredients used must be published online via announcements or websites in a timely and appropriate manner. A sticker, as in Switzerland, does not appear to be required. However, food safety related labelling changes, such as allergen declarations, whether or not heating is required before food can be safely ingested, and expiration dates, must continue to be correctly displayed on the label.

Swiss law a model for the EU?

Switzerland is not an EU Member State and is not party to the Agreement on the European Economic Area (EEA). Nevertheless, in an effort to harmonise its food legislation to a greater degree with its EU neighbours, Switzerland has adopted legislation on foodstuffs similar to EU law. The temporary derogation has been adopted regarding the prohibition of deceptive food labelling, established in Article 12(1) of the Food and Consumer Goods Ordinance: *“descriptions, indications, illustrations, wrappings, packaging, wrapping and packaging inscriptions used for food, the presentation, advertising and information about food must correspond to the facts and must not be deceptive, in particular as to the nature, origin, manufacture, type of production, composition, content and shelf life of the food in question”.*

The corresponding provision in EU food law is Article 7(1)(a) of *Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers* (hereinafter, FIR) on fair information practices, which requires that *“Food information [meaning, for example, information concerning a food and made available to the final consumer by means of a label or other accompanying material] shall not be misleading, particularly as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production”.*

It appears that supply shortages because of the *Covid-19* pandemic, such as those raised by the Swiss food industry, have not (yet) been raised in EU Member States. While a possible temporary amendment of the FIR does not appear likely, a guidance from the European Commission to EU Member States’ authorities to temporarily relax their food information enforcement measures in justified cases and with similar guarantees (e.g., stickers and correct information on the internet) may be a possible way forward to address temporary shortages attributable to the *Covid-19* pandemic.

Recently Adopted EU Legislation

Trade and Customs Law

- *Commission Delegated Regulation (EU) 2020/621 of 18 February 2020 amending Annexes I and V to Regulation (EU) 2019/125 of the European Parliament and of the Council concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment*
- *Commission Delegated Regulation (EU) 2020/578 of 21 February 2020 amending Regulation (EU) 2018/196 of the European Parliament and of the Council on additional customs duties on imports of certain products originating in the United States of America*
- *Commission Implementing Regulation (EU) 2020/573 of 24 April 2020 fixing the import duties in the cereals sector applicable from 27 April 2020*

Trade Remedies

- *Commission Implementing Regulation (EU) 2020/611 of 30 April 2020 re-imposing the definitive anti-dumping duty imposed by Council Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the People's Republic of China to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not*
- *Commission Implementing Decision (EU) 2020/588 of 22 April 2020 concerning exemptions from the extended anti-dumping duty on certain bicycle parts originating in the People's Republic of China pursuant to Regulation (EC) No 88/97 (notified under document C(2020) 2382)*
- *Commission Implementing Regulation (EU) 2020/571 of 24 April 2020 amending Implementing Regulation (EU) 2019/1198 imposing a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China, as amended by Implementing Regulation (EU) 2019/2131 and repayment of duties collected*

Food and Agricultural Law

- *Commission Implementing Regulation (EU) 2020/625 of 6 May 2020 amending Commission Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries implementing Regulations (EU) 2017/625 and (EC) No 178/2002 of the European Parliament and of the Council, and repealing Commission Implementing Regulation (EU) 2015/943 and Commission Implementing Decision 2014/88/EU*
- *Commission Implementing Regulation (EU) 2020/626 of 7 May 2020 amending Annex I to Regulation (EC) No 798/2008 as regards the entry for the Republic of North Macedonia in the list of third countries, territories, zones or compartments from which certain poultry commodities may be imported into or transit through the Union in relation to Newcastle disease*
- *Commission Implementing Regulation (EU) 2020/585 of 27 April 2020 concerning a coordinated multiannual control programme of the Union for 2021,*

2022 and 2023 to ensure compliance with maximum residue levels of pesticides and to assess the consumer exposure to pesticide residues in and on food of plant and animal origin

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