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NOTE TO SUBSCRIBERS

Dear Friends and Readers of Trade Perspectives©,

Please note that Trade Perspectives© will take an editorial break during the WTO's August recess and will resume its fortnightly publication schedule on 4 September 2020. We thank you for your continued interest in Trade Perspectives© and look forward to starting again with renewed energy and enthusiasm our dialogues on international trade and food law as of this Autumn.

The Trade Perspectives© Team

Airbus, the EU, and certain EU Member States are seeking to achieve full compliance in the *Airbus* case to finally halt US countermeasures

On 24 July 2020, the European multinational aerospace corporation *Airbus* released a statement announcing that it had reached an agreement with the Governments of France and Spain to amend "*the A350 Repayable Launch Investment contracts*", which had remained one of the issues at stake in the longstanding WTO dispute *European Communities and Certain member States – Measures Affecting Trade in Large Civil Aircraft* (DS316) (hereinafter, *Airbus* dispute), lodged by the US in 2004. Following various WTO rulings, the US was finally authorised, in October 2019, to implement countermeasures in the amount of *USD* 7,496.623 million per annum. Currently, the US is re-evaluating, for the second time, the products subject to increased tariffs introduced as countermeasures. The agreement between *Airbus* and the Governments of France and Spain seeks to achieve full compliance with all relevant WTO rulings, but it remains to be seen whether and how these developments will be taken into account by the US and if US countermeasures will indeed be withdrawn.

The longstanding Airbus *dispute*

On 6 October 2004, the US submitted its request for consultations at the World Trade Organization (hereinafter, WTO). In its request, the US claimed that certain subsidies paid to aircraft manufacturer *Airbus* for the development and production of the Airbus A350 and A380 passenger aircrafts were inconsistent with the EU's obligations under the WTO Agreement on Subsidies and Countervailing Measures (hereinafter, SCM Agreement) and the General Agreement on Tariffs and Trade (GATT) 1994. On 18 May 2011, the WTO Appellate Body upheld the Panel's finding that certain subsidies provided by the EU and certain EU Member

State Governments, namely France, Germany, Spain, and the UK, to *Airbus* were incompatible with Article 5(c) of the SCM Agreement because they had caused serious prejudice to the interests of the US. The EU implemented a multitude of changes, but, in December 2011, the US requested a compliance panel on the basis of Article 21.5 of the WTO Dispute Settlement Understanding (hereinafter, DSU) alleging the failure by the EU and the respective EU Member States to implement the recommendations and rulings adopted by the Dispute Settlement Body (hereinafter, DSB), as well as a request for countermeasures under Article 22 of the DSU. The compliance panel report was published in 2016, finding that the EU and the respective EU Member States did indeed fail to fully implement the recommendations and rulings of the DSB to bring their measures into conformity with their obligations under the SCM Agreement. On 28 May 2018, the Compliance Appellate Body report was adopted by the DSB. The Compliance Appellate Body upheld, albeit for different reasons, the Panel's conclusions that the EU and certain EU Member States had "*failed to comply with the DSB recommendations and rulings*".

In parallel to the compliance proceedings, the US had requested, on 9 December 2011, authorisation from the DSB to take countermeasures under Article 22 of the DSU and Article 7.9 of the SCM Agreement. The EU objected to the level of suspension of concessions or other obligations contained in the US' request and requested that the matter be referred to arbitration under Article 22.6 of the DSU. In January 2012, in view of the compliance proceedings, the US and the EU requested the arbitrator to suspend its work. Shortly after the decision of the Compliance Appellate Body, the US resumed its pursuit of the authorisation for countermeasures. On 14 October 2019, Members of the WTO at a DSB meeting, agreed to grant authorisation to the US to suspend certain tariff concessions vis-à-vis the EU (see *TradePerspectives,* Issue 19 of 18 October 2019). The authorisation was agreed in line with the decision of the WTO arbitrator, issued on 2 October 2019, 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*", the largest amount ever authorised.

US 'Review of Action'

On 9 October 2019, the USTR 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 initial list of products subject of additional tariffs. The additional tariffs apply since 18 October 2019 and amount to an additional 25% *ad valorem*, except for new airplanes and other new aircraft from France, Germany, Spain, or the UK, for which an additional duty of 10% *ad valorem* applies (see *Trade Perspectives*, Issue No 19 of 18 October 2019). The US is also imposing the additional tariffs of 25% on a large number of agricultural products, 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 from all EU Member States. Between December 2019 and February 2020, the USTR conducted the first '*Review of Action'* and, on 14 February 2020, the USTR amended certain aspects of the additional tariffs. 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, which is designed to penalise different sectors and to 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.

On the basis of US legislation, further reviews of the additional tariffs are to be completed every 180 days following the first review. On 26 June 2020, the USTR announced the second '*Review of Action*' regarding the countermeasures and the US Administration is again evaluating the products subject to increased tariffs (see *Trade Perspectives*, Issue 14 of 3 July 2020). A public consultation was held from 26 June to 26 July 2020 and a decision is expected to be announced on 12 August 2020.

Attempts for WTO Compliance

The WTO Compliance Panel and the Compliance Appellate Body found that, overall, the EU had failed to comply with the WTO recommendations in the *Airbus* case. While the Panel found that the EU had achieved compliance with certain elements of the DSB's ruling, the Panel also found that the EU failed to comply with the adopted DSB recommendations and rulings and, in particular, the obligation under Article 7.8 of the SCM Agreement "*to take appropriate steps to remove the adverse effects or […] withdraw the subsidy*". On 17 May 2018, the EU informed the DSB that it had taken the appropriate steps to bring its measures into conformity with its WTO obligations and in compliance with the DSB's recommendations and rulings. On 29 May 2018, the EU requested compliance consultations with the US and, in December 2019, the Compliance Panel found that the EU remained noncompliant vis-à-vis the DSB's recommendations and rulings. The EU appealed the Compliance Panel's findings, but no report has yet been issued.

Moving towards full compliance?

Despite the ongoing compliance proceedings, *Airbus*, the EU, and certain EU Member States appear to continue pursuing compliance with the DSB's rulings and recommendations. On 24 July 2020, *Airbus* reached an agreement with the Governments of France and Spain noting that it had decided that it would remove "*the last contentious point and amend the French and Spanish contracts to what the WTO considers the appropriate interest rate and risk assessment benchmarks*". *Airbus* stated that it had agreed to amend its system of financial support, the so-called *Repayable Launch Investment* (hereinafter, RLI), increasing interest payments owed to the Governments of France and Spain in relation to the A350 planes it would deliver in the future. *Airbus* Chief Executive Officer *Guillaume Fauri* noted that *Airbus* had "*fully complied with all the WTO requirements*" and had *"left no stone unturned to find a way towards a solution*".

Recognition by the US?

The European Commission stated that, with this decision, the EU and the concerned EU Member States, namely France, Spain, and Germany, were now "*in full compliance with the rulings of the World Trade Organization (WTO) in the Airbus case*" and that, therefore, "*this removes any grounds for the US to maintain its countermeasures on EU exports and makes a strong case for a rapid settlement of the long-running dispute*".

In reaction to *Airbus*' announcement, European Commissioner for Trade *Phil Hogan* stated that, due to the EU's compliance with the WTO ruling in the *Airbus* case, the EU insisted that the US lift "*these unjustified tariffs immediately*". Commissioner *Hogan* recalled that the EU remained open to work with the US "*to agree a fair and balanced outcome, as well as on future disciplines for subsidies in the aircraft sector*". Commissioner *Hogan* also stated that, if there were to be no settlement, the EU would "*be ready to fully avail itself of its own sanction rights*".

It remains to be seen how this agreement between *Airbus* and the Governments of France and Spain would be taken into account by the US and reflected in the actions by the USTR. So far, the USTR has not reacted to *Airbus*' announcement, but the US is currently re-evaluating the products subject to increased tariffs in the context of the *Airbus* dispute. The USTR is expected to release its decision on 12 August 2020, and it remains uncertain if tariffs will be removed or even extended to other products exported from the EU to the US.

Cannabidiol (CBD): novel food or narcotic? The EU appears to consider extracts from industrial hemp varieties of *Cannabis sativa L.* as '*narcotic drugs*'

On 27 July 2020, the *European Industrial Hemp Association* (hereinafter, EIHA) published its position regarding the European Commission's (hereinafter, Commission) preliminary view on

the legal status of *Cannabis sativa L.* under EU legislation. According to the EIHA, the Commission recently communicated to companies operating on the EU market and which had submitted Novel Food applications under Article 10 of *Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods* (hereinafter, Novel Foods Regulation) that it had come to the preliminary conclusion that "*extracts from industrial hemp varieties of Cannabis sativa L., and thus CBD, qualify as "drugs" in the framework of the EU legislation*". In recent years, hemp and CBD products, as well as shops selling such products, increasingly appeared across the EU, but face important impediments to further development in view of the uncertain and fragmented regulatory environment.

The Commission currently considers cannabinoids as novel food

Products derived from the hemp plant (*i.e.*, *Cannabis sativa L.*), in particular cannabidiol (hereinafter, CBD), are increasingly marketed in the EU and elsewhere. CBD is one of 113 chemical compounds (*i.e.*, cannabinoids) that are found in the hemp plant and which give the cannabis plant its medical and recreational properties. CBD accounts for up to 40% of the plant's extract and does not appear to have any psychoactive effects, such as those caused by tetrahydrocannabinol (hereinafter, THC), the most abundant cannabinoid contained in the hemp plant. What makes CBD interesting are its alleged analgesic (*i.e.*, pain-relieving), neuroprotective (*i.e.*, recovering or regenerating vis-à-vis the nervous system, its cells, structure and function), and anti-inflammatory (*i.e.*, reducing pain and inflammation) effects.

On 15 January 2019, the Commission modified the entries relating to '*Cannabis sativa*' and '*Cannabidiol (CBD)*' in the EU's '*Novel Food Catalogue*' and added an entry on '*Cannabinoids*'. On that basis, all extracts of hemp and derived products containing cannabinoids are currently described as novel food and require an authorisation under the Novel Foods Regulation. Hemp seeds, flour and seed oil remain permitted without such pre-market approval (see *Trade Perspectives,* Issue 6 of 22 March 2019).

In recent times, more than 50 applications for cannabinoid-based food ingredients have been submitted to the Commission, but no application for hemp-derived CBD products advanced from the initial stage. At the same time, at least three applications for synthetic CBD products (*i.e.*, cannabidiol derived from chemical synthesis, synthetic cannabidiol, and synthetic trans-cannabidiol) have been validated and submitted to the *European Food Safety Authority* (hereinafter, EFSA) to provide a scientific opinion, the first one of which is reportedly expected to be published in late 2020 or early 2021.

The Commission's alleged consideration

According to the EIHA's statement, the Commission announced, after an interservice consultation, that it would reject novel food applications for products made from hemp flowers, on the basis that they constitute a narcotic and that applicants were given two months to submit comments in advance of a final decision. Further, the EIHA notes that, in parallel, the Commission had suspended all novel food applications for hemp flower-derived CBD. Importantly, according to EIHA, "*the Commission's view that flower-derived CBD meets the definition of a narcotic is not new, and mirrors the Commission's position that flower-derived CBD should not be used in cosmetics", but that this may have "significant consequences for Europe's CBD industry*". Notably, EIHA underlines that the Commission might consider applications for synthetic CBD that is not extracted from the hemp plant as valid and that some of such applications had already been forwarded to the EFSA for risk assessment, in line with Article 11 of the Novel Foods Regulation.

Legal basis

On the basis of Article 2 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (the EU's General Food Law), *"[…]"food" means any substances or product,*

whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans" and "includes […] any substance […] intentionally incorporated into the food during its manufacture, preparation or treatment". Importantly, Article 2(g) of the EU's General Food Law provides that '*food*' is not to include *"narcotic or psychotropic substances within the meaning of the United Nations Single Convention on Narcotic Drugs 1961, and the United Nations Convention on Psychotropic Substances 1971*".

If the Commission were to consider CBD as a narcotic, CBD could not be considered as food and would have to be automatically disregarded in the context of Novel Food applications. According to Article 3(2)(a) of the Novel Foods Regulation, novel food is defined as "*any food that was not used for human consumption to a significant degree within the Union before 15 May 1997*", clearly referring to "*food*".

CBD and the UN Single Convention on Narcotic Drugs

The Commission bases its approach on the *United Nations Single Convention on Narcotic Drugs of 1961* (hereinafter, Single Convention). The Single Convention classifies and places drugs under international control. Article 1, paragraph 1, subparagraph (b) defines *"Cannabis"* as *"the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated*". Article 1, paragraph 1, subparagraph (c) of the Single Convention goes on to define the "*cannabis plant*" as "*any plant of the genus Cannabis*", irrespective of the plants' THC content. Article 1, paragraph subparagraph (j) defines *"drug"* as *"any of the substances in Schedules I and II, whether natural or synthetic.* In relevant part, Schedule I lists cannabis, cannabis resin and their extracts and tinctures.

While CBD as such is not regulated by the Single Convention, the Commission reportedly argues that CBD extracted from hemp flowers or fruiting tops constitutes an "*extract of cannabis*" and, therefore, must be considered as a narcotic.

When the Single Convention is strictly applied, all cannabinoids derived from the cannabis plant are considered narcotic drugs. However, such strict application does not take into account modern extraction techniques that are able to provide "*non-psychoactive*" cannabinoids. In fact, the United Nations is currently debating the reclassification of Cannabis and, notably, a number of amendments to the *Single Convention on Narcotic Drugs* were tabled and, in 2019, the World Health Organization (WHO) made recommendations for changing how cannabis is categorised in the *Single Convention on Narcotic Drugs*. More specifically, one tabled amendment would delete the category of "*extracts and tinctures of cannabis*" from the Single Convention, while another amendment would clarify that CBD preparations containing less than 0.2% THC are not under international control, and another recommendation suggests a footnote be added to the entry on cannabis, which would clarify that preparations containing "*predominantly*" CBD and up to 0.2% of THC are not under international control. The UN Commission on Narcotic Drugs is scheduled to vote on the recommendations in December 2020, but delays are not uncommon and it is not clear if there can be a majority for any change.

A different approach in the UK?

Following the UK's withdrawal from the EU, this change in approach in the EU might not affect UK market operators. Currently, UK novel food applications are still reviewed by the Commission until the end of the transition period, which followed the UK's withdrawal from the EU, which is set to lapse on 31 December 2020. The UK is scheduled to operate its own novel food approval regime from January 2021.

The UK's policy on cannabis and cannabinoids is determined by the UK's Home Office, a ministerial department of the UK Government responsible for immigration, security and law and order, and which does not appear to consider CBD to be a narcotic. Unlike the Commission, the UK does not differentiate between CBD from the hemp plant or synthetic

sources. Rather, whether a product is considered a narcotic is determined on the basis of the characteristics of the products, such as the THC content.

According to the UK's *Food Standards Agency* (hereinafter FSA), UK authorities have no plans to treat natural CBD products as narcotics. From 1 January 2021, novel food applications will be accepted by the FSA, but food products containing THC will be restricted. According to a specific guidance on CBD published by the FSA, novel food authorisation applications must be submitted to the FSA, and have been fully validated, by 31 March 2021. After this date "*only products for which the FSA has received a valid application will be allowed to remain on the market*" and no new CBD extracts may be sold until the necessary authorisation has been granted. The FSA underlines that "*advised local authorities that businesses can continue to sell their existing CBD products during this time, provided they are not incorrectly labelled, are not unsafe and do not contain substances that fall under drugs legislation*", but that "*no new CBD extracts or isolates should be sold until they have the necessary authorisation*".

A significant setback?

According to the EIHA, authorising synthetic, but not natural, CBD would not make sense *"from a scientific and environmental point of view*" since *"the final CBD product obtained from the chemical process is the same as the natural CBD extract*". Such approach would ban the sale of hemp flower-derived CBD extracts as a food product in the EU. The use in food is, by far, the most important CBD product category in the EU and mainly relies on hemp-flower derived CBD extracts.

Reclassifying CBD extracts as narcotics would be a clear setback for the nascent EU's CBD industry and would likely exempt small farmers and small food business operators from the benefits of this potential new market. If this preliminary EU position were to prevail, only major and structured actors, which can bear the financial effort of producing a synthetic product, would be able to take advantage of a sector that, according to estimates, is set to be worth EUR 1.5 billion by 2023. Such change to the regulatory approach would certainly not contribute to additional legal certainty. Business operators working on hemp and CBD-based products are advised to seek regulatory advice in order to navigate and interpret the complex and sometimes contradictory legislation in the EU and beyond.

The Advocate General of the Court of Justice of the EU holds that a French law requiring country of origin labelling of milk violates EU law

On 16 July 2020, Advocate General *Gerard Hogan* at the Court of Justice of the EU (hereinafter, CJEU) delivered his Opinion in Case C-485/18 *Groupe Lactalis v Premier ministre, Ministre de l'Agriculture et de l'Alimentation, Garde des Sceaux, ministre de la Justice, Ministre de l'Économie et des Finances* and proposed to the Judges at the CJEU that a French law of 2016, requiring dairy processors to provide the country of origin labelling (hereinafter, COOL) of milk on their products, violates *Regulation (EU) No 1169/2011 on the provision of food information to consumers* (hereinafter, FIR) on grounds that there is no established link between the provenance of the food in question and its quality, as required by Article 39(2) of the FIR. Advocate General Hogan states that "*The real question in the present case is whether a national measure which imposes such a requirement* [to indicate country of origin in labelling] *in the case of milk can be justified under EU law. However, (…), I do not believe that, in the situation considered by the referring court, that is the case*".

French law requires mandatory COOL for milk and milk used as ingredient of food

In France, *Decree no. 2016-1137 of 19 August 2016 relating to the indication of the origin of milk and milk and meat used as ingredient* (*i.e.*, *Décret n° 2016-1137 du 19 août 2016 relatif à l'indication de l'origine du lait et du lait et des viandes utilisés en tant qu'ingrédient*, hereinafter, Decree 2016-1137) governs the arrangements for labelling of the origin or provenance of milk,

as well as milk and meat used as an ingredient, specifies the geographical and material scope of this obligation, and provides for control measures and sanctions in case of violations of the rules. *Decree 2016-1137* made compulsory, for a trial period going from 1 January 2017 to 31 December 2018, and later prolonged until 31 December 2021, the indication of origin of milk, as well as milk and meat used as an ingredient in pre-packaged foods (see *Trade Perspectives*, Issue No. 1 of 13 January 2017).

In October 2016, the *Lactalis Group*, a multinational dairy group based in France and currently the biggest dairy and cheese group in Europe, as well as the biggest milk collector in Europe, requested the French *Conseil d'État* (*i.e.*, the Council of State, an institution of the French Government that acts both as legal adviser of the executive branch and as the supreme court for administrative justice) to annul for excess of power the *Decree 2016-1137*. The *Lactalis Group* questioned the utility of COOL for milk and milk used as an ingredient and considered the scheme too complex and costly. The *Conseil d'État* considered the application by the *Lactalis Group* to be admissible insofar as it sought the annulment of *Decree 2016-1137* related to milk, as well as milk used as an ingredient, but referred preliminary questions relating to the mandatory COOL for milk and milk used as ingredient of food under French law to the Court of Justice of the EU (hereinafter, CJEU).

The EU Food Information Regulation harmonised the conditions for mandatory COOL of milk

Advocate General *Hogan* proposes to the CJEU that Article 26 of the FIR, on the country of origin or place of provenance, should be interpreted as having harmonised the conditions under which the indication of the country of origin or place of provenance of milk, used as a final product or as an ingredient, may be made mandatory by EU Member States. This does not, however, preclude EU Member States from making that indication mandatory on the basis of Article 39 of the FIR where it is justified by the protection of public health, the rights of consumers, the avoidance of fraud or the prevention of unfair competition.

Mandatory COOL cannot be based solely on subjective considerations

Article 39(1) of the FIR on *National measures on additional mandatory particulars*, provides that, in addition to the mandatory labelling particulars, EU Member States may adopt measures requiring additional mandatory particulars for specific types or categories of foods, justified on grounds of at least one of the following: 1) The protection of public health; 2) The protection of consumers; 3) The prevention of fraud; and 4) The protection of industrial and commercial property rights, indications of provenance, registered designations of origin and the prevention of unfair competition. Under paragraph 2 of Article 39, EU Member States may introduce measures concerning the mandatory indication of the country of origin or place of provenance of foods only "*where there is a proven link between certain qualities of the food and its origin or provenance*". When notifying such measures to the European Commission (hereinafter, Commission), EU Member States are obliged to provide evidence that the majority of consumers attach significant value to the provision of that information.

The *Conseil d'État* asked, in essence, whether, when a measure requiring the indication of the country of origin or place of provenance is justified under Article 39(1) of the FIR, the two criteria laid down in paragraph 2 of that article should be read in combination or whether, in particular, the assessment of the first criterion, namely the existence of a '*proven link*', may be based solely on subjective elements relating to the importance of the connection which the majority of consumers can establish between the qualities of the food and its origin or provenance.

Advocate General *Hogan* holds that, while "*one may accept (…) that the existence of a 'proven link' could be based on subjective elements relating to the importance of the connection which the majority of consumers can establish between the qualities of the food and its origin or provenance*", he considers that the better interpretation of this provision is that it refers to purely objective factors. *Hogan* makes clear that "*any other conclusion would ultimately pave the way*

for the indirect re-introduction of national rules regarding food products which were designed to appeal to purely nationalistic – even chauvinistic – instincts on the part of consumers". He adds that "*since one of the objects of the internal market project has been to eliminate (where possible) such rules, it is difficult to believe that the Union legislature intended to allow their oblique re-introduction through the mechanism of Article 39(2) of Regulation No 1169/2011*". The intention of the EU legislator in formulating the first sentence was, therefore, precisely to rule out the possibility that, in the case of specific measures requiring the indication of the place of origin, their adoption might be based exclusively on purely subjective considerations.

Objective qualities or features are needed to differentiate foodstuffs having another origin

In essence, Article 39(1) of the FIR sets out the grounds of general interest, which may justify national measures imposing additional particular requirements for a particular category of foodstuffs. However, in so far as indications relating to the place of origin are concerned, Article 39(2) of the FIR imposes two additional restrictive conditions, namely, first, the existence of an established link between certain qualities of the food concerned and its origin or provenance and, second, the fact that a majority of consumers attach significant value to the provision of that information. Advocate General *Hogan* took the view that the first and the second criteria are distinct and cumulative. In particular, he argues that the requirement of the existence of a proven link between the qualities of the food and its origin or provenance cannot be satisfied solely by reference to purely subjective elements relating to the importance of the connection that the majority of consumers attach to this feature.

Most importantly, *Hogan* therefore proposes to the Judges at the CJEU that Article 39(2) of the FIR requires that the foodstuffs concerned, which come from certain countries or places of provenance, "*possess certain objective qualities or features which differentiate them from the same foodstuffs having another origin*". The Advocate General is here clearly hinting at the fact that there are no objective differences between French and, for example, Belgian milk. At the hearing, this was supported by the representative of the Commission, who said that: "*There is no difference between German and French milk; any difference of milk is only linked to the farming systems and conditions*".

In this context, it should also be recalled that a large number of dairy products already provides information on the country and sometimes region of production on a voluntary basis.

Farm-to-Fork Strategy *and* 'nationalistic*' threats to the EU's Single Market*

In the Commission's recently published *Farm-to-Fork Strategy* (see *Trade Perspectives*, Issue No. 10 of 22 May 2020), mandatory COOL and the promotion of short supply chains feature prominently. In the *Farm-to-Fork Strategy*, the Commission announced that, in order to empower consumers to make informed, healthy and sustainable food choices, it would consider to propose, by the fourth quarter of 2022, the extension of mandatory origin or provenance indications to certain products, while fully taking into account impacts on the EU Single Market. In the context of the *Covid-19* pandemic, the Commission also emphasised that "*even as societies become more urbanised, they want to feel closer to their food. They want food that is fresh, less processed and sustainably sourced. And the calls for shorter supply chains have intensified during the current outbreak*". With a view to enhance resilience of regional and local food systems and in order to create shorter supply chains, the Commission announced that it would support reducing dependence on long-haul transportation. However, at the same time it must be ensured that the Commission does not permit the introduction of nationalistic measures in the implementation of the *Farm-to-Fork Strategy*.

It must be noted that it is not only unjustified COOL measures that threaten the EU Single Market. On 10 March 2020, the Commission has released a *Communication on identifying and addressing barriers to the Single Market*, in which it did not really address the building up in the food sector of unjustified barriers to the EU Single Market that are clearly, and sometimes very openly, driven by very simple nationalistic *momentum*. This includes a Bulgarian law

obliging the retail sector to source 90% of all dairy produce at national level, a Polish '*name & blame*' website for dairy importers, Austria's Agricultural Minister's announcement to develop a '*regional bonus*' to strengthen the preference for national foods, and the French Agricultural Minister's call for '*food-patriotism*'.

Towards less COOL in the EU?

The Advocate General's Opinion on COOL for milk is not binding on the Judges of the CJEU, but usually the Advocate General's opinion is reflected in the judgement. It is the role of the Advocates General to propose to the Judges, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the CJEU are now beginning their deliberations in this case and a decision can be expected in the coming months. The *Conseil d'État* will then decide in the main case. Any ruling on COOL requirements may have important implications for international trade, the internal market, and for other mandatory national COOL schemes introduced by EU Member States, like the ones introduced in Italy for milk and milk used as an ingredient in certain milk products, durum wheat in durum wheat pasta, rice, and tomato products (see *Trade Perspectives*, Issue No. 16 of 8 September 2017 and Issue No. 23 of 15 December 2017). Stakeholders should, therefore, closely monitor the judgement of the CJEU in this case. Stakeholders should also ensure that regulators are aware of the various factors and the potential implications of COOL and other presumably nationalistic developments in food law.

Recently Adopted EU Legislation

Food and Agricultural Law

- *Corrigendum to Commission Regulation (EU) 2020/1085 of 23 July 2020 amending Annexes II and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for chlorpyrifos and chlorpyrifos-methyl in or on certain products (Official Journal of the European Union L 239 of 24 July 2020)*

Trade Remedies

- *Corrigendum to Commission Regulation (EU) 2020/1085 of 23 July 2020 amending Annexes II and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for chlorpyrifos and chlorpyrifos-methyl in or on certain products (Official Journal of the European Union L 239 of 24 July 2020)*

Trade-Related Intellectual Property Rights

- *Council Decision (EU) 2020/1111 of 20 July 2020 on the signing, on behalf of the Union, of the Agreement between the European Union and the Government of the People's Republic of China on cooperation on, and protection of, geographical indications*

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