FRATINIVERGANO
EUROPEAN LAWYERS
TRADE PERSPECTIVES©

Issue No. 20 of 30 October 2020

Trading across ASEAN Member States' borders has become easier and faster through the launch of the ASEAN Customs Transit System (ACTS)

During the week of 19 October 2020, the first ever '*live run*' under the ASEAN Customs Transit System (hereinafter, ACTS) took place, with a Malaysian DHL truck picking up a container in Singapore, transiting back through Malaysia under the ACTS customs and transport regime, and delivering the goods in Thailand.

Only one month after the launch of the ASEAN-Wide Self-Certification (AWSC) system (see *Trade Perspectives*, Issue No. 18 of 2 October 2020), businesses operating in the ASEAN region can further reduce cross-border trade costs and burdens with the official launch of the ACTS. The ACTS, which was developed with the technical and financial support of the European Union through its flagship ARISE Plus programme of assistance to ASEAN regional economic integration, is a secure online IT system designed to facilitate movement of goods in transit across the borders of ASEAN Member States, making trade faster and easier under the temporary suspension of import duties and taxes, simplified customs procedures and reduced paperwork. More specifically, the ACTS links all Customs offices at points of departure, border crossings, and destinations in the region in order to simplify and speed up Customs clearance formalities, provides them with detailed real time data on goods in transit.

The ACTS reinforces the establishment of the ASEAN Economic Community (AEC)

The ACTS has its origins in the 1998 ASEAN Framework Agreement on Facilitation of Goods in Transit (hereinafter, AFAFGIT), which lays out rules on Customs procedures and requirements for the creation of an effective and efficient ASEAN Customs Transit System in its Protocol 7 and in a Technical Appendix. The AFAFGIT is a core instrument to achieve the objective of the ASEAN Economic Community (AEC) to enable the free flow of goods in the ASEAN region by establishing a fully harmonised Customs and Transport environment. In particular, the AFAFGIT aims at facilitating the movement of goods in transit by simplifying and harmonising transport, trade, and the procedural and documentary Customs requirements imposed by ASEAN Member States.

As global trade is subject to increasing trade protectionism, the ASEAN Economic Ministers (AEM) decided in 2018 to set two ambitious targets that are supposed to accelerate the region's economic integration process by 2025: 1) To double intra-ASEAN trade; and 2) To reduce cross-border trading costs by 10%. The ACTS supports these objectives by practically allowing a vehicle operating under the transit system to move goods from a point of departure in one ASEAN Member State to a point of destination in any other participating ASEAN

Member State via any number of transit ASEAN Member States, without any intermediate unloading and with minimal procedures at the respective borders.

The ACTS is consistent with international standards set out in the World Customs Organization's (WCO) International Convention on the Simplification and Harmonization of Customs Procedures (known as the revised Kyoto Convention) and the WTO Trade Facilitation Agreement (TFA).

The ACTS benefits traders, Customs authorities and consumers in the ASEAN region

ASEAN Member States have eliminated import duties on about 99% of products traded in the ASEAN region. However, transaction costs associated with non-tariff measures (hereinafter, NTMs), particularly stringent Customs regulations, and logistics-related costs are considerably higher than import tariffs. This negatively affects the cross-border flow of goods and discourages businesses to engage in trade in the ASEAN region as non-tariff compliance costs are often higher than the potential profits. As such, the ACTS was put in place to significantly reduce these unnecessary burdens for traders, notably by reducing delays at borders and fewer physical inspections of goods in transit by Customs authorities in the ASEAN region.

The ACTS is an online IT system that links all Customs offices on the transit routes with Customs offices at the respective points of departure and destination via a secure closed communication network. It allows qualified traders to make a single electronic goods declaration at departure, which, along with the departure inspection decision, is automatically transmitted and legally recognised at all entry, exit, and destination points for purposes of complying with intra-ASEAN Customs formalities. This single declaration and mutually recognised risk management system is based on the Authorised Transit Trader (ATT) scheme and shall benefit qualified traders with faster Customs clearance at departure, borders, and destinations by eliminating the need to make repeated Customs declarations or to undergo multiple physical inspections. This accelerates transit movements and reduces the time and expenses of carrying out cross-border trade in goods within ASEAN.

The ACTS also permits the mutual recognition by ASEAN Member States of transport documents, including vehicle inspection certificates and driving licences, resulting in reduced movement restrictions on approved trucks and doing away with the annoying and costly requirement that drivers or vehicles be changed at each border. The ACTS keeps traders and transport operators automatically updated with real-time information from Customs authorities on the various stages of their goods in transit.

At the same time, the ACTS benefits ASEAN Member States' Customs authorities by providing them with the means to effectively monitor and control transit movements. This control system is intended to improve the detection and prevention of smuggling and fraud in the region and, ultimately, to reduce the related negative economic impacts, such as reduced Government revenues and a distortion in commodity prices.

On a broader level, the ACTS will benefit over 622 million ASEAN consumers with increased access to affordable and quality products, as well as help drive economic growth in the region. It truly has the potential to be a game changer for purposes of increasing intra-ASEAN trade and further integrating the economies, markets and supply chains of the region. Such degree of integration and trade facilitation has proved to be a fantastic catalyst of economic development within the European Union and it is therefore only natural that it was the European Union that partnered with ASEAN to develop the ACTS.

The ACTS allows all traders in ASEAN to participate

All traders – importers, exporters, transporters, freight forwarders, transporters, and Customs agents – are eligible to use the ACTS, but must first be registered as transit operators with the Customs authorities of a participating ASEAN Member State and in accordance with their respective set of guidelines on the criteria for eligibility. Recognised reliable traders can

subsequently apply to be granted '*Authorised Transit Traders*' status, in accordance with the qualifying criteria set by the national competent authorities. The '*Authorised Transit Traders*' status permits transit movements to depart from the trader's own premises without physically presenting the goods to Customs authorities and, similarly, for the delivery of the goods to directly take place at the trader's own premises at the place of destination.

The ACTS is made possible with EU's support under the ARISE Plus programme

As mentioned, the EU has been instrumental in achieving this important milestone in intra-ASEAN economic integration through the *ARISE Plus programme*. To develop the ACTS, the EU has supported ASEAN during Phase I (2012-2017) and during Phase II (2017-2020) of the project, which enabled the full roll-out of the ACTS in six ASEAN Member States, namely Cambodia, Lao PDR, Malaysia, Singapore, Thailand, and Viet Nam. The EU is expected to further support ASEAN during Phase III (2020-2022) of the ACTS project, which aims at including Myanmar by 2021 and lay down the basis for the participation of Indonesia, the Philippines, and Brunei to join in the future.

The ACTS is currently available along a North-South transit corridor through Thailand, Malaysia, and Singapore, and along an East-West transit corridor through Thailand, Cambodia, Lao PDR, and Viet Nam. Further support will also include functional upgrades to the ACTS, including several new subsystems, such as a transport monitoring subsystem to monitor movement of trucks irrespective of the Customs regime meant for Transport Authorities, as well as procedures that would allow the transit of goods subject to sanitary and phytosanitary (SPS) controls, as well as dangerous goods.

The ACTS system is managed by a permanent ACTS Central Management Team based in the ASEAN Secretariat in Jakarta, Indonesia. Regional and national ACTS helpdesks are operational as well.

The ACTS joins other key tools of trade facilitation in the ASEAN region

In addition to the ACTS, the EU's *ARISE Plus programme* also includes other two further important trade facilitation tools in support of ASEAN economic integration: 1) The ASEAN Trade Repository (ATR), which provides a single point of online access to the trade-related information of all ASEAN Member States; and 2) The ASEAN Solutions for Investments, Services and Trade (ASSIST) system, which serves as an online platform for businesses to seek solutions to cross-border trade implementation issues related to the ASEAN economic agreements.

The ACTS, together with other ASEAN trade facilitation measures, is poised to significantly reduce transaction costs associated with cross-border trade in the ASEAN region, as well as to facilitate compliance with customs regulations. Businesses operating in the ASEAN region should strategically take advantage of these tools.

The EU moves towards mandatory sustainable corporate governance, corporate due diligence and corporate accountability

On 26 October 2020, the European Commission (hereinafter, Commission) launched its public consultation regarding the legislative initiative on '*Sustainable corporate governance*'. With this consultation, the Commission seeks input regarding the objectives and policy options that should be considered in order to improve sustainability in the context of corporate governance, including through mandatory due diligence. The stated objective of the sustainable corporate governance initiative is to encourage businesses "*to frame decisions in terms of environmental (including climate, biodiversity), social, and human impact for the long-term, rather than on short-term gains*". This initiative will likely have a significant impact on current supply chains, affecting traders and businesses around the world.

Sustainability in the corporate governance framework

In recent times, EU Member States have been increasingly developing policies to improve supply chains and make them "*more sustainable*", as well as putting in place the related due diligence frameworks for businesses. Already in 2017, France introduced national legislation on due diligence. The French *Duty of Vigilance Law* imposes a legal obligation on companies to identify, prevent, and address human rights and environmental issues. Germany and, now outside of the EU, the UK are currently discussing the introduction of similar legislation.

At the EU level, in April 2020, the European Commissioner for Justice *Didier Reynders* stated that, in the second quarter of 2021, the European Commission would introduce a legislative proposal on '*Mandatory corporate due diligence and corporate accountability*'. On 30 July 2020, the Commission published its *Inception Impact Assessment on sustainable corporate governance*, the Commission's Roadmap. According to the Roadmap, the objective of the initiative is "*to ensure that sustainability is further embedded into the corporate governance framework with a view to align better the long-term interests of management, shareholders, stakeholders and society*". Its aim is to make companies integrate environmental and climate change issues, as well as human rights, in their operations and supply chains. The initiative intends "*to incentivise corporate boards to integrate properly stakeholder interests, sustainability risks, dependencies, opportunities and adverse impacts into strategies, decisions and oversight*".

The Roadmap states that an EU level initiative could include "*the appropriate combination of corporate (company) and directors' duties with a view to requiring (still to be determined categories of) limited liability companies "not to do harm" and to empowering corporate directors to integrate wider interests into decisions, building also on existing corporate governance mechanisms*". The initiative could include various mechanisms, such as: 1) Due diligence duties, which could be designed based on the UN '*Guiding Principles on Business and Human Rights*' (hereinafter, UNGPs) and the '*OECD Guidelines for Multinational Enterprises*'; 2) Measures to address, *inter alia*, companies' adverse sustainability impact on climate change and human rights; 3) Stakeholder involvement and corporate sustainability risks; 4) An enforcement and implementation mechanism accompanying the due diligence duties, including possible remediation where necessary; and 5) Other corporate governance arrangements. The Roadmap states that the exact type of initiative needs to be identified, but that it could include modifying *Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law* and *Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies*. The Roadmap notes that, depending on the scope and detail of the initiative, it would be necessary to assess to what extent measures could be translated into legislative or non-legislative measures.

The Commission's public consultation on '*Sustainable corporate governance*', launched on 26 October 2020, looks at a broader corporate sustainability framework with the aim of identifying the different policy options in which the Commission could intervene.

The European Parliament's position

In September 2020, the European Parliament's Committee on Legal Affairs (hereinafter, JURI) tabled a draft report on *Corporate due diligence and corporate accountability*, which included a proposal for a Directive (hereinafter, draft Directive). While the European Parliament does not have the power to make a legislative proposal, a right that lays solely with the Commission, it can issue recommendations to influence Commission proposals. This is of particular relevance in the ordinary legislative procedure, in which the European Parliament and the Council of the EU have to reach agreement. The JURI Committee's draft Report (hereinafter, Report) sets the direction on how such legislation should be designed in order to receive the European Parliament's approval. The Report proposes the preparation of a Directive on corporate due diligence and corporate accountability, which means that the rules would need

to be transposed by EU Member States into national legislation. Currently, it is not clear whether the Commission would follow the European Parliament and propose a Directive or another legal instrument or guidance.

According to the JURI Committee's Report, the Directive should aim at ensuring that undertakings, operating in the EU internal market, fulfil their duty "*to respect human rights, the environment and good governance*" and, if that were not to be the case, that they be held accountable. Article 1(3) of the draft Directive states that, in the event of "*insurmountable incompatibility*" with EU sector-specific legislation, particularly *Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market* (the EU's Timber Regulation) and/or *Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk* areas (the EU's Conflict Minerals Regulation), these Regulations would prevail. Moreover, Article 1 of the draft Directive states that the Directive must not prevent EU Member States from introducing further general or sector-specific due diligence requirements. In other words, the Directive would set a general basis for all due diligence initiatives, but so-called '*gold plating*', referring to rules that go beyond a Directive, at national and sectoral level would be allowed.

According to Article 2 of the draft Directive on the '*Scope*', the Directive would generally apply to all undertakings established in the EU, while still allowing for the exclusion of some businesses, based on a risk assessment. The draft Directive focuses on a type of due diligence requirement that covers not only a business' own operations, but also the operations of those companies with whom the company has business relationships, namely the entire value chain. The draft Directive's definition of "*value chain*" is very broad, referring to all entities with which the undertaking "*has a direct or indirect business relationship, upstream and downstream*". This means that the value chain of a company covers the suppliers that either supply products or services that contribute to the product or service of the company (*i.e.*, upstream), as well as the sub-contractors and clients that receive products or services from the company (*i.e.*, downstream). For example, a company that produces industrial ovens could be held accountable for violating the due diligence duty not only for using metals produced in a place that does not respect environmental, labour or human rights, but also for selling the ovens to a company that does not respect such rights in its activities.

The draft Directive states that EU Member States should set the rules to ensure that undertakings carry out their due diligence duties. More specifically, undertakings would have to be required to identify the risks in their value chains and draw up a due diligence strategy to "*cease, prevent or mitigate*" those risks. Additionally, the undertakings should be required to identify the level of severity and urgency of the risk. In establishing and implementing their due diligence strategy, the undertaking should carry out a stakeholders consultation. Furthermore, it should be required to guarantee that trade unions are involved in the establishment and implementation of the due diligence strategy.

One of the critical issues raised by civil society organisations and labour unions is the importance of a mechanism to provide an effective response in case of concerns and violations. Article 9 of the draft Directive introduces a '*grievance mechanism*', which would require undertakings to establish "*a grievance mechanism, both as an early-warning risk-awareness and as a remediation system, allowing any stakeholder to voice concerns regarding the existence of a human rights, environmental or governance risks*". Notably, Article 10 of the draft Directive then provides that EU Member States are to "*ensure that, when an undertaking identifies, in particular through its grievance mechanism, that it has caused or contributed to harm, it provides for or cooperates with- remediation*". Finally, Article 19 of the draft Directive on '*Penalties*' states that a repeated infringement by an undertaking "*of the national provisions adopted in accordance with this Directive constitutes a criminal offence, when committed intentionally or with serious negligence*".

On 26 October 2020, the European Parliament's Committee on International Trade (INTA) adopted its position on the JURI Report and proposed a number of amendments. One of the amendments calls for the new rules to be established in a Regulation rather than a Directive, which means that the rules would be directly applicable across the EU without the need for transposition. The European Parliament's Committee on Foreign Affairs (AFET) still needs to provide its opinion and the JURI Committee will then table a consolidated report for a debate and vote in the European Parliament's plenary. The final report, likely to be voted on at the end of this year, will then be submitted to the Commission.

Further considerations and reactions

The reactions from the business sectors have been many, For instance, in the context of this debate, the French pharmaceutical company *Sanofi* raised the issue of a companies' liability when it had carried out the required due diligence in compliance with the legislation. *Sanofi* stated that, based on the experience with the French *Duty of Vigilance Law*, the legislative initiative should take a company's efforts to engage with suppliers to improve sustainability into consideration. The absence of such considerations would push companies to terminate contracts with suppliers that do not comply, which would not improve sustainability, as companies would lack the incentive to improve their supply chain.

Additionally, various stakeholders also underlined the importance to include the recognition of international standards into the legislative initiative. On 27 October 2020, the European Commissioner for Justice *Reynders* reiterated that the EU's legislative initiative would contain clear references to existing standards, such as the UNGPs and the OECD Guidelines for Multinational Enterprises. Currently, the draft Directive prepared by the European Parliament's JURI Committee refers, in its preamble, to such guidelines, as well as to the Paris Climate Agreement, but does not make any reference to international environmental standards in its legal text. The recognition of international standards could mean that a business that is already actively involved in due diligence processes could more easily be considered in compliance with the mandatory requirements.

Time to engage now

The EU legislative process on sustainable supply chains and due diligence requirements is still at an early stage and discussions are ongoing. However, the Report of the European Parliament's JURI Committee is already quite concrete and the Commission intends to table a legislative proposal in the first half of 2021. Interested stakeholders should actively participate in the legislative process, assess the implications for their operations, and participate in the public consultation, which will be open until 8 February 2021.

The European Food Safety Authority (EFSA) makes a proposal for a safety threshold in the use of per- and poly-fluoroalkyl substances (PFAS) in food

On 17 September 2020, the European Food Safety Authority (hereinafter, EFSA) published the outcome of a public consultation on the draft risk assessment of 27 per- and poly-fluoroalkyl substances (hereinafter, PFAS) in food. In its risk assessment, the EFSA indicates a safety threshold for the main per-fluoroalkyl substances aimed at preventing their adverse effects on human health. PFAS are synthetic chemical substances that have been largely used since the 1940s in a wide range of consumer products, such as cookware, food packaging, and stain repellents. PFAS manufacturing and processing facilities are also sources of these chemical compounds, which may be released into the air, soil, and water and possibly become a threat for human health. Forthcoming regulatory measures are poised to affect a wide range of industries.

What are per- and poly-fluoroalkyl substances (PFAS)?

PFAS belong to a group of synthetic chemical compounds used to make fluoropolymer coatings and products that resist heat, oil, stains, and water. Fluoropolymer coatings can be used in a multitude of products, such as clothing, furniture, adhesives, food packaging, heat-resistant non-stick cooking surfaces, and in the insulation of electrical wire. According to the US Centers for Disease Control and Prevention (CDC), many chemicals in this group, including *per-fluorooctane sulfonic acid* (PFOS) and *per-fluorooctanoic acid* (PFOA), are considered a concern because they do not break down in the environment and can accumulate over time. They can move through soil and contaminate drinking water sources, ultimately accumulating in fish and wildlife. PFAS have been found in rivers, lakes and in many types of animals on land and in the water. There is evidence that exposure to PFOS and PFOA, the two most studied categories of PFAS, may have severe effects on humans, affecting growth and development, reproduction, thyroid function, the immune system, and injure the liver.

The EFSA's assessment of PFAS

On 30 January 2020, the *EFSA Panel on Contaminants in the Food Chain* (hereinafter, CONTAM Panel) endorsed a draft Scientific Opinion on *Risk to human health related to the presence of per-fuoroalkyl substances in food,* which was subject to a public consultation from 24 February to 20 April 2020. The comments received were published in an EFSA Technical Report and informed the final opinion, adopted by the CONTAM panel on 9 July 2020.

Already in 2018, the EFSA had carried out an assessment on *Per-fluorooctane Sulfonic Acid* (PFOS) and *Per-fluorooctanoic Acid* (PFOA) and established two distinct tolerable weekly intakes (hereinafter, TWI) for these chemical compounds, based on increased cholesterol as the main critical effect observed in humans. However, the European Commission requested the EFSA to re-evaluate PFOS and PFOA on the basis of newly available data about their effects in animals and humans and on new scientific studies, which questioned the direct link between increased cholesterol levels and PFAS' exposure.

In its 2020 scientific opinion, the CONTAM Panel evaluated the risk to human health related to the presence of PFAS in food, establishing that, for PFOS and PFOA, '*fish and other seafood*' were the most important contributor to consumers' average exposure, followed by '*eggs and egg products*', '*meat and meat products*', and '*fruit and fruit products*'. For PFOA, '*vegetables and vegetable products*' and '*drinking water*' were also important contributors. For several of the other PFAS, '*fish and other seafood*', '*fruit and fruit products*', '*vegetables and vegetable products*', '*drinking water*', as well as '*starchy roots and tubers*' were the most important food groups contributing to consumers' average exposure. As regards infants and children, although '*food for infants and small children*' was a major contributor to PFAS exposure, this remained highly uncertain since the findings were based on few samples with detected values. Breastfeeding and transmission during pregnancy appeared to be the main sources of PFAS level in infants.

In addition, due to the fact that they made up approximately half of the exposure to those PFAS for which data were available, the CONTAM Panel performed a risk assessment for the sum of four PFASs: PFOS, PFOA, perfluorooctanoic acid (PFNA), per-uorohexane sulfonic acid (PFHxS). The combined evaluation, carried out on the basis of the EFSA *Guidance for assessing combined exposure to multiple chemicals*, found that the main categories of food contributing to the combined exposure in all groups of the population were '*fish meat*', '*fruit and fruit products*', and '*eggs and egg products*'. PFOA, PFOS, PFNA and PFHxS are known for not breaking down in the human body and for accumulating over time. Given the risk of accumulation over time, the CONTAM Panel proposes a TWI of "*4.4 ng/kg bw [body weight] per week*". According to the EFSA's scientific opinion, this TWI also protects against other potential adverse effects observed in humans, such as an increased level of cholesterol in the blood. It is important to note that, in the draft opinion, the CONTAM Panel established a TWI of 8 ng/kg bw per week for the sum of PFOA, PFNA, PFHxS and PFO, which was then lowered

in the final opinion to the current *4.4 ng/kg bw per week* due to the important rate of accumulation over time of the four chemical compounds.

In its 2020 Opinion, the EFSA raised concerns that the PFAS exposure in the EU population may exceed the established TWI and provided a number of recommendations to decrease the uncertainty in the evaluation, including "*the need for more sensitive and accurate tools for determining individual and total PFAS, as well as the need for more studies on the effects of PFAS on human health*". The EFSA also underlined "*the need for studies on the effect of cooking and food processing, especially in relation to transfer to food from food-contact materials that contain PFAS, and on the contribution to PFAS exposure from sources other than food*".

Regulating PFAS in the EU

In the EU, PFOS is currently regulated under *Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants* (hereinafter, POPs Regulation). PFOA is regulated under the POPs Regulation and is also considered a Substance of Very High Concern (SVHC), which is restricted under *Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC* (hereinafter, REACH Regulation).

PFOA-related compounds will be phased-out on the basis of a timetable established in the Annex to *Commission Regulation (EU) 2017/1000 of 13 June 2017 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards perfluorooctanoic acid (PFOA), its salts and PFOA-related substances*. Taking into account the precautionary principle, the objective of *Regulation (EU) 2017/1000* is to protect human health and the environment from POPs by prohibiting, phasing out as soon as possible, or restricting the manufacturing, placing on the market and use of substances subject to the *Stockholm Convention on Persistent Organic Pollutants* (hereinafter, the Stockholm Convention), by minimising, with a view to eliminating where feasible as soon as possible, the release of such substances, and by establishing provisions regarding waste that consists of, contains, or is contaminated by any of those substances.

PFOS and PFOA are the PFAS that, to date, have received the most attention because they meet the defining characteristics of the persistent organic pollutants included in the *Stockholm Convention*: they are toxic, extremely resistant to degradation, and, according to research published by the European Consumer Organisation (*BEUC*) in 2017, they accumulate in the food chain and can persist in the human body from 1.5 to 9.1 years for PFOA and from 2.29 to 21.3 years for PFOS. Science has recognised more than 4,700 additional PFAS and the assessment of each one of them is considered a lengthy and resource-consuming process. For this reason, alternative approaches for the management of PFAS are being developed, including the regulation of PFAS as a class, or in subgroups, on the basis of their degree of toxicity or chemical similarities.

Although the ways of PFAS into the environment remain largely undetermined, regulatory authorities will have to make a choice on how to protect consumers from exposure to such chemical compounds. Given the multitude of potential sources for human exposure and consumption of PFAS, it appears difficult to establish what proportion of PFAS in humans can be attributed to dietary exposure and what proportion should be attributed to other sources. The multitude of PFAS compounds and their varied chemical properties make it very difficult to study the toxicological risk of each individual PFAS compound, which clearly complicates the task for regulatory bodies intending to regulate the use of PFAS compounds.

In recent years, several regulatory initiatives have already been taken to restrict the use of PFAS. At EU level, a proposal to amend *Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy* and establish a new '*group limit*' value for PFAS of 0.5 µg per litre in drinking water, in addition to limits for 16 individual PFAS of 0.1 µg per litre in drinking water, is currently under consideration. At international level, the 9th meeting of the Conference of the *Stockholm Convention*, held in 2019, adopted amendments including PFOS and PFOA in the list of persistent organic pollutants. A report published by the Norwegian Government in December 2019 also suggested that PFAS might be treated as food contaminants and that maximum levels in food would be established under *Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs.*

Towards increased regulation of PFAS

The most recent scientific assessment related to the effects of PFAS on human health and the initiatives under consideration to regulate the use of these chemical compounds to protect consumers are poised to lead to additional and more restrictive measures by EU regulatory authorities. Food business operators and other stakeholders in the industries using PFAS should closely monitor any related regulatory activity. Following the EFSA opinion indicating a TWI for certain PFAS in food, these substances may emerge as the next chemical contaminant for which maximum levels in foodstuffs are established by the EU.

Recently Adopted EU Legislation

Food and Agricultural Law

- *Commission Implementing Regulation (EU) 2020/1540 of 22 October 2020 amending Implementing Regulation (EU) 2019/1793 as regards sesamum seeds originating in India*

- *Commission Implementing Decision (EU) 2020/1550 of 23 October 2020 establishing the multiannual programme of controls for the period 2021-2025 to be carried out by Commission experts in the Member States to verify the application of Union agri-food chain legislation*

- *Commission Implementing Regulation (EU) 2020/1559 of 26 October 2020 amending Implementing Regulation (EU) 2017/2470 establishing the Union list of novel foods*

- *Commission Implementing Regulation (EU) 2020/1572 of 28 October 2020 amending Implementing Regulation (EU) 2019/626 as regards lists of third countries and regions thereof authorised for the entry into the European Union of dairy products and insects*

Trade Remedies

- *Commission Implementing Regulation (EU) 2020/1534 of 21 October 2020 imposing a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) 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*

Maria Esperanza Alconcel, Ignacio Carreño, Fabrizio De Angelis, Simone Dioguardi, Tobias Dolle, Michelle Limenta, Alya Mahira, Lourdes Medina Perez, Aivaras Pigaga and Paolo R. Vergano contributed to this issue.

Follow us on twitter @FratiniVergano

To subscribe to *Trade Perspectives*©, please click here. To unsubscribe, please click here

FRATINIVERGANO specialises in European and international law, notably WTO and EU trade law, EU agricultural and food law, EU competition and internal market law, EU regulation and public affairs. For more information, please contact us at:

FRATINIVERGANO – EUROPEAN LAWYERS
Boulevard Brand Whitlock 144, 1200 Brussels, Belgium. Telephone: +32 2 648 21 61, Fax: +32 2 646 02 70. www.fratinivergano.eu

Trade Perspectives© is issued with the purpose of informing on new developments in international trade and stimulating reflections on the legal and commercial issues involved. *Trade Perspectives*© does not constitute legal advice and is not, therefore, intended to be relied on or create any client/lawyer relationship.

To stop receiving *Trade Perspectives*© or for new recipients to be added to our mailing list, please contact us at TradePerspectives@fratinivergano.eu

Our privacy policy and data protection notice is available at http://www.fratinivergano.eu/en/data-protection/