FRATINIVERGANO
EUROPEAN LAWYERS
TRADE PERSPECTIVES©

Issue No. 1 of 15 January 2021

Agreement at the last minute: The EU and the UK finally agreed on the EU-UK Trade Cooperation Agreement

Since 1 January 2021, the *Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part* (hereinafter, the EU-UK TCA) is being provisionally applied. On 24 December 2020, the EU had finally reached an agreement with the UK after intensive negotiations that breached many self-imposed deadlines. The EU-UK TCA establishes the terms for a new relationship between the EU and the UK, following the latter's withdrawal from the EU. Despite an agreement having been reached, trade between the EU and the UK is subject to fundamental changes, as the UK is no longer part of the EU Single Market and the EU Customs Union. While the EU-UK TCA establishes a free trade area regarding goods and limited mutual market access in services, non-tariff measures, such as additional administrative requirements, will certainly render EU-UK trade more burdensome for businesses.

On 29 March 2017, the Government of the UK had officially notified the EU of its intention to withdraw from the EU and originally committed to leave the EU at 24:00 CET on 29 March 2019. On 23 March 2018, both sides had reached agreement on a transition period from 29 March 2019 to 31 December 2020, during which the future relationship was to be defined (see *Trade Perspectives*, Issue No. 7 of 6 April 2018). After postponing the date of withdrawal, the UK left the EU on 31 January 2020 at 24:00 CET and entered into the transition period. Following 47 years of membership, the UK has become the first Member State to leave the EU.

The EU-UK Trade and Cooperation Agreement

As said, the EU-UK TCA has been in provisional application since 1 January 2021. The Agreement consists of seven parts, namely: 1) '*Common and institutional provisions*'; 2) '*Trade, transport, fisheries and other arrangements*'; 3) '*Law enforcement and judicial cooperation in criminal matters*'; 4) '*Thematic cooperation*' on health and cyber security; 5) '*Participation in Union programmes, sound financial management and financial provisions*'; 6) '*Dispute settlement and horizontal provisions*'; and 7) '*Final provisions*', as well as various annexes and protocols. Notably, the Agreement must be read together with the various

declarations. These political declarations, such as the ones on financial services and protection of classified information, provide commitments by both parties to work together and agree on future cooperation in those areas as soon as possible.

The EU-UK TCA provides the new rules that now regulate trade relations between the EU and the UK. It establishes a free trade area for goods and services and its commitments go beyond what has been agreed in recent EU preferential trade agreements (hereinafter, PTAs), such as those with Canada (*i.e.*, the Comprehensive Economic and Trade Agreement (CETA) and with Japan (*i.e.*, the EU-Japan Economic Partnership Agreement), but obviously falls short of the rules in place when the UK was still part of the EU Single Market and the Custom Union. The EU-UK TCA also delivers certain novelties in the area of sustainable development and environmental protection, such as the establishment of a dedicated dispute settlement mechanism regarding the non-regression from labour and social levels of protection, as well as regarding environmental or climate change protection.

Customs checks and regulatory barriers

The EU-UK TCA provides for zero customs tariffs and quotas for all goods originating in the EU or the UK and traded between the parties. The EU and the UK also committed to zero export tariffs, taxes, or other charges. As the UK is no longer part of the EU Customs Union, the EU-UK TCA establishes the rules for customs checks and formalities, which are linked to the new rules of origin that apply to trade between the EU and the UK. Since 1 January 2021, the Union Customs Code and the equivalent UK customs legislation apply. For goods entering the UK from any third country, including any EU Member State, a transition period, divided into three stages from January to July 2021, has been established by the UK Government and further detailed in the *Border Operating Model*. Importantly, the preferential treatment under the EU-UK TCA only applies if the goods originated in the EU or in the UK. Goods that do not meet the applicable rules of origin are subject to the external EU and UK tariffs. However, an insufficient number of customs agents, burdensome bureaucratic processes, and the lack of familiarity with the new rules look poised to create difficulties for traders that need prove the origin of a product.

With respect to technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures, the EU-UK TCA does not provide for the harmonisation of technical regulations, standards, and conformity assessment procedures between the two parties. Each Party remains free to decide such rules. However, the Agreement goes beyond the WTO TBT and SPS Agreements and imposes an obligation to base its standards and technical regulations on certain specific international standards, such as the standards developed by the International Organization for Standardization (ISO), the International Telecommunication Union (ITU), and the Codex Alimentarius. An important change in the area of technical regulations concerns the conformity assessment marking. For products placed on the UK market, the UK Conformity Assessment (UKCA) marking will replace the *CE* marking used within the European Economic Area (EEA) and indicating conformity with health, safety, and environmental protection standards. The *CE* marking will continue be valid in the UK for areas where the UK and EU rules remain the same and the UK committed to accepting the *CE* marking for medical devices until 30 June 2023. However, the UKCA marking will not be recognised within the EEA.

Important changes for the agro-food industry

Since 1 January 2021, the UK's Food Standards Agency (hereinafter, FSA) and Food Standards Scotland (hereinafter, FSS) are responsible for most of the competences previously held at EU level in the area of food safety. The FSA is the main body responsible for food and feed safety in England, Wales, and Northern Ireland, while the FSS is responsible for food and feed safety in Scotland. The competence for food standards largely lies with the UK Central Government.

The essential elements of all current EU legislation still apply in the UK as national law, with the necessary changes made to reflect the fact that the UK is no longer an EU Member State (see *Trade Perspectives*, Issue No. 22 of 27 November 2020). Importantly, UK Regulations 2019 SI 2019/614 revoked the UK's participation in the EU-wide *Rapid Alert System for Food and Feed* (RASFF). In case of domestic emergencies or incidents related to food and feed that might be potentially harmful to human health, the FSA and the FSS will be in charge of issuing the necessary notice and of taking actions in partnership with local authorities. The UK is also part of the International Food Safety Authorities Network established by the FAO/WHO to facilitate the exchange of cross-border information between members.

Changes to export procedures

Live animals and animal products exported from the UK to the EU will need to be dispatched from approved establishments. UK food establishments wishing to be added to the EU list of approved establishments are required to contact the UK's *Animal and Plant Health Agency* (hereinafter, APHA), which operates under the UK's Department for Environment, Food and Rural Affairs (DEFRA) that oversees animal and plant health.

Furthermore, health and identification marks must be applied to food products of animal origin that are to be exported to the EU, in order to confirm that they were produced in accordance with the regulatory requirements in an approved establishment. Naturally, products of animal origin that have been produced in approved UK establishments are no longer allowed to use EU health and identification marks and will have to apply the two-letter ISO code '*GB*' or the full country name '*UNITED KINGDOM*'. Additionally, all consignments of live animals and animal products being exported from England, Scotland, and Wales to the EU require a certified export health certificate (hereinafter, EHC). Importantly, under the *Protocol on Ireland/Northern Ireland*, an EHC is not required to export live animals and animal products from Northern Ireland to the EU. With respect to geographical indications, no agreement was reached and the EU and the UK merely committed to a review clause to revisit this issue and jointly "*agree rules for the protection and effective domestic enforcement of their geographical indications*".

Change to import procedures

Live animals, animal products from the EU, non-EU countries and Northern Ireland can be dispatched in England, Scotland, and Wales only if these come from approved establishments. Food business operators in England, Scotland, and Wales must pre-notify imports from the EU and certain countries within the European Free Trade Association (EFTA) via the UK's *Import of Products, Animals, Food and Feed System* (hereinafter, IPAFFS). Imports of those products must be accompanied by a health certificate, an import license, and appropriate commercial documents. The APHA is the UK authority responsible for overseeing the import procedures of live animals and animal products.

Import procedures for high-risk food and feed of non-animal origin also fall under the competence of APHA. The import of such products from the EU into the UK must be pre-notified though the IPAFFS and they must enter the UK territory through a border control point (BCP) for documentary checks and inspection. For now, as regards the frequency of checks of high-risk food and feed of non-animal origin from certain countries of origin, the UK has retained the rules established in *Commission Implementing Regulation (EU) 2019/1793 of 22 October 2019 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries.* High-risk products, controlled upon importation into the UK, may be permitted pending the results of laboratory tests. The UK *Regulations 2019 SI 2019 639* retained *Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs*.

The way forward

The EU-UK TCA has been provisionally applied since 1 January 2021. According to the Agreement, the provisional application will last until 28 February 2021 or until another date "*decided by the Partnership Council*", but not beyond 30 April 2021, which is when the so-called legal scrubbing and translation of the agreement should be finalised. For the EU-UK TCA to permanently enter into force, the consent of the European Parliament and the Council of the EU are required. A vote by the European Parliament is expected in March 2021. The Commission considers that the EU-UK TCA is an EU-only agreement, which means that ratification by the remaining 27 EU Member States is not necessary. Businesses in the EU, in the UK and around the world should carefully assess the text of the agreement, the future rules for EU-UK trade, and UK regulatory requirements that are poised to change over time and create additional non-tariff burdens.

Decision of the arbitration panel under the EU-Ukraine Association Agreement – the EU's '*premiere*' of choosing FTA dispute settlement over the WTO

On 11 December 2020, the arbitration panel established under the *European Union-Ukraine Association Agreement* (hereinafter, EU-Ukraine AA) ruled on export bans introduced by Ukraine related to certain timber products, considering the bans to be incompatible with commitments under the Agreement. The ruling is of particular significance in global trade dispute settlement, as it concerns the first major case that the EU pursued through an arbitration panel under a bilateral preferential trade agreement (hereinafter, PTA). Given the current paralysis of the WTO Appellate Body, it can be expected that dispute settlement mechanisms under PTAs will further gain relevance.

The EU-Ukraine dispute in brief

On 20 June 2019, the EU Delegation to Ukraine had submitted a *Note Verbale* to the Ministry of Foreign Affairs of Ukraine requesting, "*on behalf of the European Union, the establishment of an arbitration panel pursuant to Article 306 of the Association Agreement of 21 March 2014 between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part*" (see *Trade Perspectives,* Issue No.14 of 12 July 2019). The request concerned a ban introduced by the Government of Ukraine regarding exports of certain timber products from Ukraine. Since 2005, Ukraine has been applying a permanent prohibition on exports of *timber* and *sawn wood* of ten wood species (*i.e.*, acacias, acers, black cherries, checker trees, cherry trees, chestnuts, common yews, junipers, pear trees, and walnut trees) and, starting from 2015, it also introduced a temporary ban, for a period of 10 years, on the exports of *unprocessed timber*.

According to the *Final Report of the Arbitration Panel*, the EU claimed that Ukraine's measures were in breach of the EU-Ukraine AA, notably Articles 35, 36, and 290(1) thereof. Under Article 35 of the EU-Ukraine AA, both Parties committed not to "*adopt or maintain any prohibition or restriction or any measure having an equivalent effect on the import of any good of the other Party or on the export or sale for export of any good destined for the territory of the other Party (…)*". The EU considered the Ukraine's measures to be prohibitions inconsistent with Article 35 of the EU-Ukraine AA and not justifiable under Article XX(b) and XX(g), respectively, of the *General Agreement on Trade and Tariffs 1994* (hereinafter, GATT 1994), which is expressively recalled in Article 36 of the EU-Ukraine AA. Finally, the EU claimed that the measures could not be justified under the "*right to regulate*" recognised in Article 290(1) of the EU-Ukraine AA because such right "*must be exercised in accordance with the requirements of other provisions of the AA that give expression and operationalise the 'right to regulate', including the policy exceptions mentioned in Article 36 of the AA*".

Ukraine's defence against the EU's complaint focussed firstly on a preliminary issue of jurisdiction of the panel, arguing that the dispute was to be treated under Chapter 13 of the

EU-Ukraine AA on *Trade and Sustainable Development*, rather than through dispute settlement under Chapter 14. Ukraine further held that its measures were not inconsistent with Article 35 of the EU-Ukraine AA, as the EU "*was not able to prove that they have the "effect" of restricting exports of the products concerned*" and that the measures were justifiable under Article XX(b) and Article XX(g) respectively of the GATT 1994, which allow otherwise inconsistent measures when they are "*necessary to protect human, animal or plant life or health" or relate "to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption*", respectively. Finally, Ukraine argued that the measures were covered by the "*right to regulate*", and needed to be considered in the context of the EU-Ukraine AA's Chapter on *Trade and Sustainable Development*.

The arbitration panel first addressed the question of jurisdiction, stating that the matter of the dispute represented by the complainant determines under which Chapter of the Agreement the dispute be treated and that the EU alleged a breach of Article 35 of the EU-Ukraine AA. The arbitration panel ruled that, while the 2005 export ban was inconsistent with Article 35 of the EU-Ukraine AA, it was justifiable on the basis of Article XX(b) of the GATT 1994. However, the arbitration panel considered the 2015 temporary export ban to be inconsistent with Article 35 of the EU-Ukraine AA and not justifiable on the basis of Article XX(g) of the GATT 1994.

Enforcing the Arbitration Panel's ruling

Article 310 of the EU-Ukraine AA provides that the arbitration panel "*shall notify its ruling to the parties and to the Trade Committee within 120 days of the date of establishment of the arbitration panel*". There is no provision to appeal such ruling. Article 311 establishes a compliance mechanism under which the Parties commit to "*take any measure necessary to comply in good faith with the arbitration panel ruling, and the Parties will endeavour to agree on the period of time to comply with the ruling*". Finally, in case of non-compliance with the ruling, Article 315 of the EU-Ukraine AA provides that "*the Party complained against shall, if so requested by the complaining Party, present an offer for temporary compensation*". In case no agreement on compensation is reached, the complaining Party is "*entitled, upon notification to the Party complained against and to the Trade Committee, to suspend obligations arising from any provision contained in the Chapter on the free-trade area at a level equivalent to the nullification or impairment caused by the violation*".

Given that the arbitration panel only partially sided with the EU, and given that no appeal is possible under the EU-Ukraine AA, and that the issue concerns WTO commitments mirrored in the EU-Ukraine AA, the EU could consider filing a complaint at the WTO. In this context, Article 324(1) of the EU-Ukraine AA notes that "*Recourse to the dispute settlement provisions of this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement action*" and paragraph 2 states that "*where a Party has, with regard to a particular measure, instituted a dispute settlement proceeding, either under Article 306(1) of this Agreement or under the WTO Agreement, it may not institute a dispute settlement proceeding regarding the same measures in the other forum until the first proceeding has been concluded*". Importantly, Article 324(2) of the EU-Ukraine AA does exclude a subsequent proceeding in the other *forum*, providing that "*a Party shall not seek redress of an obligation which is identical under this Agreement and under the WTO Agreement in the two forums*" and that "*once a dispute settlement proceeding has been initiated, the Party shall not bring a claim seeking redress of the identical obligation under the other Agreement to the other forum, unless the forum selected fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation*". Given that the arbitration panel did not dismiss the EU's claims on the 2005 export ban on procedural grounds, the recourse to WTO dispute settlement would contravene Article 321(2) of the EU-Ukraine AA. However, it appears that the EU's rights as a WTO Member can certainly not be renounced on the basis of such bilateral commitment.

Choosing the appropriate dispute settlement mechanisms

This is the first major trade dispute that the EU pursued under a bilateral PTA, although it related to disciplines contained in the EU-Ukraine AA that mirror World Trade Organization (hereinafter, WTO) rules. This approach should be seen in the context of the current paralysis of the WTO Appellate Body since the end of 2019 (see *Trade Perspectives*, Issue No. 15 of 27 July 2018 and Issue No. 5 of 8 March 2019). If the EU had filed a complaint under the WTO dispute settlement and a panel had ruled in its favour, Ukraine could have appealed the decision to the Appellate Body, but, given that the Appellate Body is currently not operational, the appeal would have gone into the void. However, Ukraine and the EU are part of the *Multi-Party Interim Appeal* mechanism (hereinafter, MPIA) Arbitration Arrangement that was notified to the WTO on 30 April 2020 to continue, at least for the Participating Members, having a two-tiered dispute settlement mechanism available within the WTO level.

A new trend towards dispute resolution in EU trade agreements

Recent EU PTAs include detailed dispute settlement mechanisms to resolve any disputes that might arise between the EU and its trading partners. Such mechanisms are based on WTO dispute settlement, but the relevance of such alternative dispute settlement *fora* has significantly increased with the current paralysis of the WTO Appellate Body. On 18 December 2020, the European Commission (hereinafter, Commission) published a call for *Candidates for dispute settlement activities under EU trade and investment agreements*, with the aim of appointing arbitrators or experts that would contribute to the resolution of disputes. The initiative aims at ensuring the effective functioning of the bilateral trade dispute settlement mechanisms by building a roster of qualified candidates from which adjudicators in dispute settlement proceedings can be appointed. Given that dispute settlement under PTAs will be of increasing importance, a certain degree of transparency must be ensured so that '*precedents*' can be determined and '*case law*' consulted. In this context, the EU recently created a new online resource on *ongoing cases* under bilateral trade agreements, which appears to be regularly updated with the latest documents of the respective cases, including currently: 1) *Algeria trade restrictive measures*; 2) *Korea labour commitments*; 3) *Southern African Customs Union poultry safeguards*; and 4) *Ukraine wood export ban*.

The EU's increased emphasis on implementation and enforcement of trade agreements

Following the conclusion and entry into force of various PTAs, the EU has increased its emphasis on the implementation and enforcement of such agreements. In 2020, the Commission appointed the EU's first *Chief Trade Enforcement Officer* (see *Trade Perspectives*, Issue No. 17 of 20 September 2019 and Issue No. 1 of 17 January 2020). Additionally, on 16 November 2020, the Commission also introduced a new complaint mechanism related to the enforcement of trading partners' trade commitments. The complaint mechanism has been introduced for "*reporting market access barriers and breaches of trade and sustainable development commitments in the EU's trade agreements and under the Generalised Scheme of Preferences*", reflecting the Commission's increased efforts "*to strengthen the enforcement and implementation of trade agreements*" (see *Trade Perspectives*, Issue No. 22 of 27 November 2020).

The new normal

The EU's important '*premiere*' of addressing a trade dispute within the dispute settlement *forum* established under a PTA appears to foreshadow the new reality of international trade dispute settlement, especially in case the WTO Appellate Body's current paralysis cannot be overcome in the near future. Stakeholders and all interested parties should monitor relevant developments and ongoing disputes and, if affected, make their voice heard, for instance by submitting *amicus curiae* briefs to the relevant arbitration panel, which is often an available option.

Developments on an EU animal welfare label, mandatory origin labelling, and front-of-pack (FoP) nutrition labelling

On 15 December 2020, the Council of the EU (hereinafter, Council) invited the European Commission (hereinafter, Commission) to submit a proposal on an EU-wide animal welfare label for food produced under animal welfare standards higher than those in EU legislation. The decision was taken by EU Member States' ministers responsible for agriculture during the last Agriculture and Fisheries Council of the German Council Presidency. At the same Agriculture and Fisheries Council meeting, no agreement was reached on plans for mandatory country of origin labelling, as well as for front-of-pack (hereinafter, FoP) nutrition labelling, leaving these issues for the Portuguese Council Presidency, which took office on 1 January 2021.

Criteria for an EU-wide animal welfare label

On 20 May 2020, the Commission announced in its '*A Farm to Fork Strategy - for a fair, healthy and environmentally-friendly food system*' that it would consider options for animal welfare labelling to better transmit value through the food chain. In its *Conclusions on the Farm to Fork Strategy*, approved on 19 October 2020, the Council invited the Commission to assess the impact of an EU regulatory framework with criteria for an animal welfare labelling scheme. The welfare of animals is an issue of high importance to European citizens and has been recognised as such by EU law, in particular by Article 13 of the Treaty on the Functioning of the European Union (hereinafter, TFEU), which notes that "*In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals*".

On 7 December 2020, the Council adopted *draft Conclusions on an EU-wide animal welfare label*, which were, on 15 December 2020, endorsed by the EU Member States' Ministers responsible for agriculture gathered in the Council of the EU, supporting consumer demands to easily recognise food produced under stricter animal welfare standards.

EU Member States' Ministers, in the conclusions, called for specific criteria to be taken into account when developing an EU-wide label. For instance, the Commission was invited to consider the following aspects before submitting a proposal: 1) To develop a tiered transparent labelling scheme allowing for sufficient incentives for producers to improve animal welfare; 2) To establish EU-wide harmonised, measurable and verifiable criteria that go beyond current EU legal requirements on animal welfare; 3) To gradually include all livestock species in the label covering their entire lifetime (including transport and slaughter); 4) To create a standardised EU logo and to determine easily understandable protected terms; and 5) To ensure a smooth interplay with existing national schemes and the new EU-wide animal welfare labels.

Reactions: Voluntary or mandatory Animal Welfare labelling?

Germany's Federal Minister of Food and Agriculture *Julia Klöckner*, who presided the Agriculture and Fisheries Council during the German Council Presidency, emphasised that "*Animal welfare has been a priority for our presidency, and I am very pleased to see that it is also now becoming an EU priority for more ambitious and higher standards. A common EU label on animal welfare would increase credibility and transparency in our markets and would enable consumers to make more informed choices. It would also help reward producers who respect those standards*".

The European Commissioner for Agriculture *Janusz Wojciechowski* said that "*the animal welfare label scheme the EU executive is set to propose will only be voluntary*". The news that a decision had been reached on animal welfare labelling was welcomed by many campaigners, who said that a label is needed that covers the entire lifetime of animals, including factors such

as transport, slaughter, and all of the living conditions of the animals. However, others criticised the failure to already specify clear requirements for the label, warning that this calls into question whether it would indeed be effective in increasing animal welfare standards and whether EU Member States will be able to use it. In fact, the *Conclusions on an EU-wide animal welfare label* do not explicitly call for a voluntary or mandatory system. However, in recital 4, they "*draw attention to existing initiatives in the Member States, in particular to the already successfully established voluntary animal welfare labels in some of them*", which can be seen as a clear preference of a voluntary system.

No consensus over FoP nutrition labels that are increasingly becoming a 'marketing tool'

During the Agriculture and Fisheries Council on 15 and 16 December 2020, no consensus was reached on the complex matter of FoP nutrition labelling, which has long been a cause for contention between EU Member States' governments. The Agriculture and Fisheries Council considered the *draft Council Conclusions on front-of-pack nutrition labelling, nutrient profiles and origin labelling* at its meeting on 15 December 2020. Those draft conclusions call upon the Commission to take into account, in its legislative proposal for a harmonised FoP scheme, the following, *inter alia*: 1) Be science and evidence based, not leading to unjustified distinctions between foodstuffs and not misleading consumers as to their nutritional value and impact on health; 2) Be developed in consultation with the relevant stakeholder groups; 3) Be easily visible and understandable for all consumer groups, and not presuppose any in-depth nutritional knowledge from consumers; 4) Be transparent for the public; 5) Be easily verifiable by the competent authorities; and 6) Be overall consistent with common dietary guidelines. However, in light of the discussion, the German Presidency concluded that it was not possible to reach consensus on the draft conclusions. While 23 delegations supported the text of the German Presidency in its entirety, three delegations (*i.e.*, the Czech Republic, Greece, and Italy) did not support it.

In a separate declaration, attached to the final document, the three dissenting countries called in question only the nutritional labelling part of the draft conclusions. According to the separate declaration, the Czech Republic, Greece, and Italy believe that an EU harmonised FoP nutrition labelling scheme must be a voluntary instrument to provide factual information on calories and individual nutrients contained in a food product, in full compliance with the requirements set by Article 35 of *Regulation (EU) 1169/2011 on food information to consumers*. They state that the "*Commission should address the need to encourage EU citizens to adopt a healthier lifestyle through a multidimensional approach, including the urgent launch of effective education campaigns*". Furthermore, "*a FoP nutrition labelling scheme must neither be a marketing tool nor jeopardize traditional and high-quality productions. In this sense, Protected Designations of Origin, Protected Geographical Indications and Traditional Specialities Guaranteed, as well as single ingredient products, will have to be exempted*".

The separate declaration indirectly addresses "*simplified*" FoP nutrition labelling schemes like the *Nutri-Score*, which provides the rating of a food product, ranging from a dark green A (best) to a red E (worst), by weighing the prevalence of presumably '*good*' and '*bad*' nutrients. The algorithm on which the *Nutri-Score* system is based appears to consider only a limited number of favourable and unfavourable elements. Unlike so-called '*traffic light*' labels, which rate the healthiness of a product by assessing the content of key nutrients (*i.e.*, salt, fat, saturated fat, sugar) and total calorie count, the *Nutri-Score* provides only a single score for the entire product, giving consumers an overall assessment of the product, but without taking into account other elements, such as calories and recommended intakes.

The point expressed in the separate declaration that "*a FoP nutrition labelling scheme must not be a marketing tool*" has been taken up by parts of the food industry. For instance, the Export Manager of cheese company *Zanetti Spa* and European Dairy Association (EDA) board member Valentina Zanetti reportedly stated that many FOP nutrition labels are becoming such tools and are "*supported by 'typical marketing instruments' – such as colour-coding and scale – that influence consumer purchasing behaviours*".

Harmonised origin labelling or EU Member States piecemeal?

Although consensus on an overall harmonised food labelling framework has not been reached yet, EU Member States' Ministers responsible for agriculture have made progress regarding the specific proposal for mandatory food origin labelling, as the final conclusions by the German presidency show. The document reads that "*in the case of an extension of the mandatory indication of origin or provenance to other products, harmonised rules at EU level are preferable to national measures*" and that "*milk, milk used as an ingredient in dairy products, meat, and meat used as an ingredient should be seen as first priorities*". In fact, in recent years, a number of EU Member States have introduced national measures to specify the origin of certain categories of food such as milk or some main ingredients of food products. France, for instance, has introduced mandatory country of origin labelling for milk and meat used as an ingredient in processed foods (see *Trade Perspectives*, Issue No. 14 of 15 July 2016). Italy introduced similar measures and went beyond milk and meat, adopting some national schemes to specify the origin of tomatoes used in tomato sauce and durum wheat in pasta (see *Trade Perspectives*, Issue No. 16 of 8 September 2017).

Indeed, national origin labelling measures appear to encourage local sourcing without regard to the detrimental impact that they may have on established supply chains that often transcend borders and might, thereby, already restrict the free movement of goods within the EU Single Market, possibly violating Article 34 of the TFEU. Another effect of mandatory origin labelling on all operators that are subject to the origin labelling requirements is an added cost for processors, which has consequences at all levels of the supply chain, from farmers to consumers. The current piecemeal approach of national origin labelling measures does not do justice to the EU Internal Market (see *Trade Perspectives*, Issue No. 22 of 30 November 2018).

Next steps on animal welfare, origin, and *front-of-pack* nutrition labelling

No timeline has been indicated for the adoption of a proposal on a harmonised EU-wide animal welfare labelling. Regarding origin labelling and FoP nutrition labelling, on 23 December 2020, the European Commission has opened the feedback period related to the legislative roadmaps of a forthcoming legislative initiative on *Food labelling - revision of rules on information provided to consumers*. This initiative aims "*to ensure better labelling information to help consumers make healthier and more sustainable food choices (…), by proposing to: introduce standardised mandatory front-of-pack nutrition labelling and extend mandatory origin or provenance information for certain products (…)*". Feedback can be submitted until 3 February 2021 and interested stakeholders should monitor the various legislative procedures and partake in the respective consultations.

Recently Adopted EU Legislation

Customs Law

- *Commission Implementing Regulation (EU) 2021/28 of 14 January 2021 amending Council Regulation (EC) No 1362/2000 as regards the Union tariff quota for bananas originating in Mexico*

- *Commission Implementing Regulation (EU) 2021/11 of 7 January 2021 amending Implementing Regulation (EU) No 498/2012 on the allocation of tariff-rate quotas applying to exports of wood from the Russian Federation to the European Union*

- *Decision No 1/2019 of the EU-Mexico Joint Committee of 16 October 2019 relating to amendments to Annex III to Decision No 2/2000 of the EC-Mexico Joint Council concerning the definition of the concept of originating products and*

methods of administrative cooperation (Andorra and San Marino, and certain product-specific rules of origin for chemicals)

Market Access

- *Commission Implementing Regulation (EU) 2021/24 of 13 January 2021 amending Annex I to Regulation (EC) No 798/2008 as regards the entry for the United Kingdom in the list of third countries, territories, zones or compartments from which certain poultry commodities may be imported into and transit through the Union in relation to highly pathogenic avian influenza*

- *Council Decision (EU) 2021/12 of 17 December 2020 on the position to be taken on behalf of the European Union within the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as regards the determination of goods not at risk*

Trade Remedies

- *Commission Implementing Regulation (EU) 2021/9 of 6 January 2021 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey*

Other

- *Notice concerning the provisional application of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information and of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy*

- *Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part*

- *Declarations referred to in the Council Decision on the signing on behalf of the Union, and on a provisional application of the Trade and Cooperation Agreement and of the Agreement concerning security procedures for exchanging and protecting classified information*

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

Follow us on twitter @FratiniVergano