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## **Are negotiations of a WTO agreement on fisheries subsidies entering their final phase?**

On 21 April 2021, the Director-General of the World Trade Organization (hereinafter, WTO), *Ngozi Okonjo-Iweala*, and the Chair of the WTO fisheries subsidies negotiations, Colombian Ambassador to the WTO, *Santiago Wills*, urged WTO Members “*to prepare to make tough calls and pave the way for a ministerial meeting in July in a bid to deliver an agreement that will curb harmful state support for fishing*”. Negotiations for an Agreement aim at eliminating certain fisheries subsidies in view of their contribution to illegal, unreported and unregulated (hereinafter, IUU) fishing. After 20 years of negotiations, the announcement by WTO Director-General *Okonjo-Iweala* of a ministerial meeting in July 2021 appears to be evidence of new *momentum* regarding the long-awaited conclusion of an Agreement on Fisheries Subsidies. However, certain issues, such as the criteria to qualify for special treatment and transition periods for Least Developed Countries (hereinafter, LDCs), as well as the approach regarding the prohibition of subsidies contributing to overcapacity and overfishing, still have to be resolved.

### ***The thorny issue of fisheries subsidies***

The WTO [Agreement on Subsidies and Countervailing Measures](#) (hereinafter, SCM Agreement) defines subsidies as a “*financial contribution by a government or any public body within the territory of a Member*”, provided that certain conditions are met, or as “*any form of income or price support in the sense of Article XVI of GATT 1994*”. In both cases, a benefit must be conferred to fulfil the conditions defining a subsidy. The Food and Agriculture Organization of the United Nations (hereinafter, FAO) defines fisheries subsidies as “*government actions or inactions that are specific to the fisheries industry and that modify – by increasing or decreasing – the potential profits by the industry in the short-, medium- or long-term*”.

In this context, the United Nations Conference on Trade and Development (UNCTAD) estimated, in 2017, that the global value of fisheries subsidies amounts to USD 35 billion per year, USD 20 billion of which contribute directly to overfishing. Moreover, according to the FAO, in 2020, the percentage of produce fished at an unsustainable level has exponentially increased to about 34.2%, compared to only 10% in 1974. Although the SCM Agreement does not provide a definition of fisheries subsidies, efforts to address such subsidies within the WTO began already in 2001. In the WTO Ministerial Declaration, adopted at the WTO’s Fourth

Ministerial Conference in 2001 (hereinafter, *Doha Declaration*), WTO Members committed to “clarify and improve WTO rules that apply to fisheries subsidies”.

### ***The pending subject of the WTO Doha round***

The *Doha Declaration* highlighted the importance of regulating fisheries subsidies, “taking into account the importance of this sector to developing countries”. The need for clarification and improvement of rules regulating fisheries subsidies was then reiterated within the 2005 Hong Kong Ministerial Declaration. Notably, in paragraph I(9) of Annex D ‘Rules’ to the Hong Kong Ministerial Declaration, reference is made to the need to prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing. Paragraph I(9) also states that the “[a]ppropriate and effective special and differential treatment for developing and least-developed Members should be an integral part of the fisheries subsidies negotiations, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns”. Furthermore, paragraph I(10) of Annex D directed the WTO Negotiating Group on Rules “to intensify and accelerate the negotiating process in all areas of its mandate, on the basis of detailed textual proposals” and to complete the process as soon as possible. Paragraph I(11) shows that the intended timeline in 2005 was for consolidated texts (which were to serve as the basis for the final stage of negotiation) to be prepared “early enough to assure a timely outcome within the context of the 2006 end date for the Doha Development Agenda” (see *Trade Perspectives, Issue No. 14 of 14 July 2017*).

### ***The renewed urgency of establishing a regulatory framework for fisheries subsidies***

While negotiations did not progress within the intended timeframe, substantial progress has been made within the Negotiating Group on Rules, which is the group negotiating rules on fisheries subsidies. Notably, press releases issued by the WTO and statements published by WTO Members have shown that a core aim of the negotiations shifted towards meeting the United Nations’ Sustainable Development Goal (hereinafter, SDG) 14.6, which states that, by 2020, countries should “prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing, and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the WTO fisheries subsidies negotiation”. As of December 2015, at the 10<sup>th</sup> Ministerial Conference of the WTO in Nairobi, several textual proposals were submitted by WTO Members that served as the basis for the discussions on the future Agreement. In July 2017, following the request of WTO Members, the WTO Secretariat began compiling a matrix of the seven proposals that had been received, in order to support the consultations and negotiations (see *Trade Perspectives, Issue No. 17 of 22 September 2017*).

During the 11<sup>th</sup> WTO Ministerial Conference held in 2017, the African Group coalition at the WTO requested Special and Differential Treatment for fisheries subsidies. This request was opposed by many WTO Members, as it would not have been in line with the objective of achieving the SDG 14.6. Given such diverging views, WTO Members did not manage to go beyond the establishment of a work programme, within which they committed to find an Agreement to implement the SDG 14.6 by the end of 2019, in time for the 12<sup>th</sup> WTO Ministerial Conference, originally planned to take place in June 2020 (see *Trade Perspectives, Issue No. 1 of 12 January 2018*). However, due to the *Covid-19* pandemic, the 12<sup>th</sup> Ministerial Conference was postponed and is now scheduled to take place from 30 November 2021 to 3 December 2021.

### ***A WTO Agreement on Fisheries Subsidies on the horizon?***

On 25 June 2020, the Chair of the WTO Negotiating Group on Rules presented a draft consolidated text of the draft Agreement on Fisheries Subsidies, which WTO Members agreed to work on. The text became the basis for further discussions and amendments, which led to a new revised draft text presented on 2 November 2020. Reportedly, the revised draft took into account subsidies that contribute to IUU fishing, subsidies to fishing of overfished stocks, and

subsidies that greatly impact overfishing and overcapacity. Moreover, based on the current draft, the future Agreement would prohibit subsidies for fuel and for boat building.

Reportedly, the most difficult issue to tackle is how to treat developing countries, which are asking to be exempted from the potential prohibition of fisheries subsidies. This issue has also been the concern of various organisations such as *Europêche*, a representative body for fishermen in the EU, which has stated that including exemptions to the benefit of developing and least developing countries would hamper the objective of the Agreement. *Europêche* provided the example of China, a developing country according to the World Bank, which has the largest distant-water fishing fleet in the world and is the biggest subsidiser of fisheries.

### ***The role of the WTO Agreement on Subsidies and Countervailing Measures***

Like any other subsidy, fisheries subsidies are subject to the notification requirements set out in Article 25 of the WTO SCM Agreement (*i.e.*, the need of submitting the notification of subsidies “*not later than 30 June of each year*” and of ensuring that “*the content of notifications should be sufficiently specific to enable other Members to evaluate the trade effects and to understand the operation of notified subsidy programmes*”). Reportedly, the current negotiations on the Agreement on Fisheries Subsidies would propose a different set of requirements concerning the notification of fisheries subsidies. For instance, it is being discussed whether the subsidising WTO Member should include, in its notification, information concerning the stock of the fish for which the subsidy would be granted. This would help other WTO Members to better assess the environmental implications of such a subsidy. The legal form of the Agreement is still to be settled. However, one option could be that of adding it as an annex to the SCM Agreement.

### ***The way forward***

WTO Director-General *Okonjo-Iweala* highlighted the need for swift actions in the context of fisheries subsidies and the importance to deliver an Agreement by the 12<sup>th</sup> Ministerial Conference at the end of this year. Reducing and potentially prohibiting fisheries subsidies is expected to, *inter alia*, improve food security worldwide and restore global fish stocks. Interested stakeholders and any other interested party should closely monitor the developments of the negotiations.

## **The trade ties between the UK and the ASEAN region post-‘Brexit’**

Following 47 years of membership, the UK has become the first Member State to leave the European Union (EU). The UK’s departure from the EU, on 29 March 2019, had and has wide-ranging impacts on its trade and investment relations with third countries, including those in Asia. In order to maintain preferential trade, the UK negotiated so-called ‘*roll over*’ trade agreements to allow for the continued applications of existing EU trade agreements with certain third countries. Additionally, the UK is exploring new ways to collaborate with ASEAN Member States (*i.e.*, Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam).

### ***The growing importance of ASEAN markets for the UK***

ASEAN is an important market and its Member States collectively rank as the sixth largest global economy. By 2030, ASEAN is projected to become the fourth largest ‘*single market*’ in the world, only behind the EU, the US, and China. The UK has been making efforts to strengthen relations with ASEAN and to deepen political and economic ties with the Southeast Asian nations. Over the past decade, trade between the UK and ASEAN has grown by almost 70% to just under EUR 42 billion, while, in 2019, trade in goods and services increased by 10%. Currently, bilateral trade in goods and services stands close to EUR 42 billion. In November 2019, a few months after its withdrawal from the EU, the UK established a dedicated

Mission to ASEAN and appointed its first Ambassador designated to the bloc. The main purpose of the mission is to develop a number of core areas of discussion, including the forging of more regional trading networks and boosting the UK's commercial presence.

Over the years, the UK's engagement with ASEAN had long been facilitated by the EU's Dialogue Partnership with the ten ASEAN Member States. Since its withdrawal from the EU, engagement with ASEAN on its own was considered critically important. In June 2020, the UK formally put itself forward to become one of ASEAN's dialogue partners. In general terms, ASEAN dialogue partnerships are characterised by regular high-level exchanges and dialogues, including ministerial meetings and summits. The issues addressed can include the promotion of trade and investments, the strengthening of socio-cultural links, and the exchange of views on bilateral and regional political issues.

### ***The first formal economic dialogues in 2020 and 2021***

In August 2020, the first formal engagement was held through the *UK-ASEAN Economic Dialogue 2020*. In this context, the UK and ASEAN committed to sustain and deepen economic ties, mitigate the economic impact of the *Covid-19* pandemic, and pursue sustainable economic growth. More specifically, the UK agreed to work with ASEAN and the *Economic Research Institute for ASEAN and East Asia* (ERIA) on research to help strengthen UK-ASEAN supply chains and to continue working closely with the *ASEAN Business Advisory Council* (ABAC). The latter is tasked to design a private sector-led regional digital trade connectivity roadmap, complementing various ASEAN trade facilitation programmes. With respect to digital innovation, the UK agreed to fund the new *UK-ASEAN Digital Business Challenge*, which aims at assisting micro, small and medium enterprises in the digital sector.

The second *UK-ASEAN Economic Dialogue* was held in April 2021 and discussions focussed on the *Covid-19* pandemic, initiatives to build a resilient and sustainable economic recovery, as well as on addressing the adverse impacts of climate change.

### ***A preferential trade agreement with Singapore***

In recent years, and with the ultimate objective of an EU-ASEAN region-to-region trade agreement, the EU has already successfully negotiated trade agreements with two ASEAN Member States, namely Singapore and Viet Nam. In order to maintain the preferential trade relations with both markets, the UK negotiated so-called '*roll-over*' trade agreements with the two countries before the '*Brexit*' transition period ended, both of which entered into force on 1 January 2021.

On 10 December 2020, Singapore's Minister for Trade and Industry *Chan Chun Sing* and the UK Secretary of State for International Trade *Elizabeth Truss* signed the UK-Singapore Free Trade Agreement (hereinafter, UKSFTA), the UK's first trade agreement with an ASEAN Member State. The UKSFTA covers more than USD 224.8 billion (EUR 17 billion) of current bilateral trade in goods and services. The UKSFTA largely mirrors the EU-Singapore FTA. More specifically, the UKSFTA eliminated 84% of all tariff lines for Singapore's exports to the UK and the tariffs on virtually all remaining products will be eliminated by November 2024. Additionally, Singapore continues to apply the current level of duty-free access under the EUSFTA for all UK products entering Singapore. The UKSFTA provides for flexible rules of origin with respect to the two countries' key products, such as chemicals, clothing and textiles, and electronics.

On 29 December 2020, the UK signed the UK-Viet Nam Free Trade Agreement (UKVFTA), which again mirrors the commitments under the EU-Viet Nam FTA. The Government of the UK described Viet Nam as a "*significant opportunity for UK exporters*", as it is an expanding domestic consumer market and is turning into a large market for capital goods. With respect to trade in goods, Viet Nam immediately reduced tariffs accounting for about half of UK exports to the country and about 92% of tariffs will be reduced to 0% within six years of entry into force, including for machinery, mechanical appliances, and pharmaceutical products. At the same

time, trade in services is also expected to flourish and, under the UKVFTA, Viet Nam opened new sub-sectors for UK service providers and committed to go beyond its WTO commitments.

### ***Joining the CPTPP?***

More recently, on 1 February 2021, the UK Government applied to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CP-TPP), a trade agreement between 11 Asia-Pacific countries, namely Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Viet Nam. The parties to the CPTPP account for 13% of the global Gross Domestic Product (GDP) and for 15% of global trade. In simple terms, in order to join the CPTPP, the UK will have to follow the process set out in the *Decision by the Commission of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership regarding Accession Process of the CPTPP*. Formal negotiations are expected to be launched this Spring, and the UK Secretary of State for International Trade *Elizabeth Truss* stated that the UK aims at joining the agreement within the next 12 months. The accession process includes the submission of a formal request to commence accession process, the formation of an accession working group, and final approval by the Commission of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

### ***Conclusion of joint trade reviews with Indonesia and Thailand, discussions with Malaysia***

Efforts are also underway to establish enhanced bilateral trade relations between the UK and ASEAN Member States that still have no existing trade agreements with the EU, namely Indonesia and Thailand, through exploratory trade dialogues.

Indonesia, one of the world's fastest-growing economies, has been a priority post-*'Brexit'* partner for the UK, considering the significant trade between the two countries. In 2019, bilateral trade in goods and services between the UK and Indonesia had a value of USD 3.8 billion. In recognition of the importance of deepening trade and investment relations, both countries launched the *Joint Trade Review (JTR)* in October 2019, with the objective of providing an overview of the current trade and investment relationship and of developing potential recommendations for improving trade cooperation and mutual engagement.

The *Joint Trade Review* was carried out by both Governments over the past 18 months and was finalised in April 2021. At the third meeting, which was held in November 2020, discussions focussed on improving trade and investment in nine priority sectors, namely: 1) Food and beverages, and agricultural products; 2) Education and training; 3) Renewables/green energy; 4) Infrastructure and transportation; 5) Wood and wooden products; 6) Financial and professional services; 7) Pharmaceuticals and healthcare/life sciences; 8) Technology; and 9) Creative economy. In the past, UK companies often expressed their concerns with respect to Indonesia's foreign ownership restrictions and local content requirements, while Indonesian companies have been concerned with the UK's high standards for certain products, as well as a lack of recognition for professional qualifications. In order to address such concerns, and as a follow-up to the *Joint Trade Review's* recommendations, the Governments of Indonesia and of the UK announced their shared commitment to realise the potential growth of bilateral trade and, on 26 April 2021, signed a *Memorandum of Understanding on the Joint Economic and Trade Committee (JETCO)*. The JETCO is a dialogue *forum* at the ministerial level, which is to meet annually and discuss bilateral trade issues.

A similar *Joint Economic and Trade Committee (JETCO)* was also established, on 29 March 2021, with Thailand. The *Joint Trade Review* undertaken by the Governments of the UK and Thailand had identified agriculture, food and beverages, financial services, healthcare, and technology as priority sectors. Through enhanced dialogue, trade and investment are supposed to improve and market access barriers shall be progressively addressed.

With Malaysia, preparatory work to negotiate a preferential trade agreement was initiated at the first meeting of the *UK-Malaysia Joint Committee on Bilateral Trade and Investment Cooperation*, held in November 2020. The Joint Committee is a platform to strengthen bilateral trade and investment.

### ***The next steps***

The UK has become one of the few countries with a designated Ambassador to ASEAN, who is in charge of supporting the extensive cooperation programmes. So far, the UK's initiatives moved forward by the UK following 'Brexit' and the engagement with multiple ASEAN Member States are sending a positive signal for future trade relations and market integration. The entry into force of the UKSFTA and the UKVFTA allows traders to continue enjoying the trade benefits previously enjoyed by the UK as an EU Member State. Interested stakeholders should closely analyse these agreements, so as to make the most out of the preferential market access conditions that they provide, and make their voices heard within the dialogues opened with other key ASEAN Member States, notably Indonesia, Malaysia, and Thailand.

### **To prevent food waste, the EU intends to revise the EU rules on date marking**

According to the EU's *Farm to Fork Strategy*, the European Commission (hereinafter, Commission) will propose, by the end of 2022, a revision of the EU rules on date marking. In doing so, the Commission aims at preventing "food waste linked to misunderstanding and/or misuse of these dates, whilst ensuring that any proposed change meets consumers' information needs and does not jeopardise food safety". Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers (hereinafter, FIR) sets out the rules on date marking for foodstuffs. Essentially, the 'use by' date on food is about food safety, meaning that food should not be consumed after this date, regardless of its appearance, whereas the 'date of minimum durability of a food' or 'best before' refers to quality, meaning that food is still safe to eat after this date, but may not be at its best. Misunderstanding and misuse of date marking leads to food waste, when consumers discard food with a passed 'best before' date.

### ***The current EU rules on date marking in the EU Food Information Regulation***

The 'date of minimum durability of a food' is defined in Article 2(2)(r) of the FIR as the "date until which the food retains its specific properties when properly stored". The term 'Use-by date' is not explicitly defined. Article 24(1) of the FIR is the crucial provision for the differentiation of the minimum durability date and the 'use by' date: "In the case of foods which, from a microbiological point of view, are highly perishable and are therefore likely after a short period to constitute an immediate danger to human health, the date of minimum durability shall be replaced by the 'use by' date. After the 'use by' date a food shall be deemed to be unsafe (...)".

Annex X to the FIR provides in detail how minimum durability date and use-by date are to be expressed. The date of minimum durability shall be preceded by the words: 'Best before ...' when the date includes an indication of the day, and 'Best before end ...' in other cases, accompanied by either the date itself, or a reference to where the date is given on the labelling. The 'use by' date shall be preceded by the words 'use by ...', accompanied by either the date itself, or by a reference to where the date is given on the labelling. In the case of the 'use-by' date, the description of the storage conditions must be provided. 'Best before' and 'use-by' dates are to consist of the day, the month and, possibly, the year, in that order and in uncoded form (i.e., not put into a code or marked with a code).

Article 9(1)(f) of the FIR on the 'List of mandatory particulars' provides that, subject to certain exceptions, the indication of the date of minimum durability or the 'use by' date is mandatory. These exceptions are also established in Annex X, namely for: 1) Fresh fruit and vegetables, including potatoes, which have not been peeled, cut, or similarly treated; 2) Wines, liqueur

wines, sparkling wines, aromatised wines, and similar products; 3) Beverages containing 10% or more by volume of alcohol; 4) Bakers' or pastry cooks' wares which, given the nature of their content, are normally consumed within 24 hours of their manufacture; 5) Vinegar; 6) Cooking salt; 7) Solid sugar; 8) Confectionery products consisting almost solely of flavoured and/or coloured sugars; and 9) Chewing gums and similar chewing products.

### **Proposed changes to the date marking rules**

The EU's legislative Roadmap on [Food labelling - revision of rules on information provided to consumers](#), published on 23 December 2020, pursued as part of the EU's *Farm-to-Fork Strategy*, states that the proposal aims at ensuring "*better labelling information to help consumers make healthier and more sustainable food choices and tackle food waste*". The legislative proposal will mainly concern three areas of food labelling rules: 1) The introduction of standardised mandatory front-of-pack nutrition labelling (see *Trade Perspectives*, [Issue No. 11 of 5 June 2020](#)); 2) The extension of mandatory origin or provenance information for certain products; and 3) The revision of the rules on date marking. The reason for the revision of the date marking is that "*Consumers often misunderstand and misuse date marking*". According to a 2015 *Eurobarometer* survey, less than 50% of consumers understand the meaning of date marking: 'use by', which indicates the ultimate food safety date, and 'best before', which refers to the date food retains its optimal quality. The Commission's report [Estimates of European food waste levels](#) found that this contributes to 20% of the food that EU citizens waste annually. A [Commission market study on date marking](#), published in 2018, concluded that up to 10% of all food waste generated in the EU could be linked to date marking.

In the legislative Roadmap, the Commission proposes three policy options, further to the baseline scenario ('*business as usual*') in which the current EU date marking rules in the FIR would not be revised. Option 1 is to revise the rules of application of the 'best before' date, extending the list of foods for which the 'best before' date is not required, to non-perishable foods with long shelf life, such as pasta, rice, coffee, and tea. Option 2 is to abolish the concept of 'best before' date with the view to keep only one durability date, which would be the '*food safety/health*' related date, currently expressed as 'use by' date. Finally, Option 3 is to revise the current date marking rules to improve the way of expressing the two different types of date marking (e.g., in terms of terminology, format, visual presentation) in order to better differentiate between the food safety/health and quality concepts. The Commission suggests that "*these amendments, tailored to the languages and consumer understanding in each Member State could include alternative or additional wordings (e.g. "best before, often good after", Codex Alimentarius terminology (expiration date end, best quality before end) as well as changes in format, lay-out, colour, such as for example imposing a mandatory graphical/visual presentation (e.g. a red colour for 'use by' dates and green colour for 'best before' dates or different symbols such as a STOP sign for 'use by' dates etc.)*".

### **Comment on the Commission's proposed options**

The Commission's idea of reducing food loss and food waste by amending food labelling legislation on the date marking of food is not new. In 2014, the Netherlands and Sweden made some suggestions to address the problem, notably concerning the exemption of products with a long shelf life from the requirement to provide a 'best before' date on the label (see *Trade Perspectives*, [Issue No. 11 of 30 May 2014](#)).

In its Option 1, the Commission proposes to revise the rules of application of the 'best before' date, extending the list of foods for which it is not required, to non-perishable foods with long shelf life such as pasta, rice, coffee, and tea. This could open a debate as to which other products might, in the future, be exempt. Foods with a long shelf life, such as certain hard cheeses and bottled mineral water, have been mentioned as possible further exemptions because, if these products are stored adequately, they remain edible and normally safe after the expiry of the 'best before' date. In addition to the above listed products, the FIR's predecessor (i.e., *Directive 2000/13/EC of the European Parliament and of the Council on the*

*approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs*) also exempted soft drinks, fruit juices, fruit nectars, and alcoholic beverages in individual containers of more than five litres (intended for supply to mass caterers) and individual portions of ice-cream from the obligation to bear a 'best before' date.

However, it appears that new exemptions need to be coordinated with the food industry. For example, Italian pasta producers have expressed, in the past, the view that, in addition to food safety issues, the protection of the organoleptic properties of the products is essential for consumers. Food must be safe and tasty, and the 'best before' date is useful to indicate that the quality of products remains intact until a certain date.

Option 3, proposing a revision of the current date marking rules to improve the way of expressing the two different types of date marking in order to better differentiate between the food safety/health and quality concepts, appears to be the better option. However, arguably, alternative or additional wordings, like the terminology used in the [Codex Alimentarius General Standard \(CXS 1-1985\) for the Labelling of Prepackaged Foods](#), may create more confusion. The *Codex Alimentarius* uses "Best Quality Before Date" or alternatively "Best Before Date" as the "date which signifies the end of the period, under any stated storage conditions, during which the unopened product will remain fully marketable and will retain any specific qualities for which implied or express claims have been made. However, beyond the date the food may still be acceptable for consumption". "Use-by Date" or "Expiration Date" means "the date which signifies the end of the period under any stated storage conditions, after which the product should not be sold or consumed due to safety and quality reasons". Safety and quality issues appear to be overlapping.

In the initial feedback to the legislative Roadmap, numerous stakeholders argued that a review of the exact wording of the statements may be needed, in particular to ensure that the translation into each language of the EU is appropriate to convey the meaning of the date marking.

Changes in format, layout, colour, such as for example imposing a mandatory graphical/visual presentation (e.g., a red colour for 'use by' dates and green colour for 'best before' dates or different symbols such as a STOP sign for 'use by' dates), appear to be good ideas. However, it may be a difficult task to design them so to avoid that they be confused with nutritional or environmental labels.

It appears reasonable to keep both dates, as date marking is provided on the labelling in order to ensure food safety and quality. It is determined by different factors, which depend on the product and manufacturing process. However, to ensure clearer differentiation between the two dates, it appears that consumers should be better informed and educated on the exact meaning and implications of the two types of dates.

## **Outlook**

In the fourth quarter of 2021, a public consultation is scheduled to take place before the Commission will propose, by the end of 2022, the revision of the EU rules on date marking. Stakeholders in the agri-food sector should carefully observe this regulatory initiative, taking actions to ensure that their legitimate interests are voiced and represented within all relevant fora.

## **Recently Adopted EU Legislation**

### **Trade Law**

- [Commission Delegated Regulation \(EU\) 2021/731 of 26 January 2021 supplementing Regulation \(EU\) No 648/2012 of the European Parliament and of the Council with](#)



*regard to rules of procedure for penalties imposed on third-country central counterparties or related third parties by the European Securities and Markets Authority ( 1 )*

## Customs Law

- *Commission Implementing Regulation (EU) 2021/734 of 5 May 2021 amending Implementing Regulation (EU) 2021/521 making specific arrangements to the mechanism making certain products subject to the production of an export authorisation*

## Food Law

- *Commission Implementing Directive (EU) 2021/746 of 6 May 2021 amending Directives 2003/90/EC and 2003/91/EC as regards the protocols for the examination of certain varieties of agricultural plant species and vegetable species, and amending Directive 2003/90/EC as regards certain botanical names of plants*
- *Commission Implementing Regulation (EU) 2021/733 of 5 May 2021 amending Implementing Regulation (EU) No 887/2011 and Implementing Regulation (EU) 2017/961 as regards the name of the holder of the authorisation of Enterococcus faecium CECT 4515 as a feed additive and amending Implementing Regulation (EU) 2020/1395 as regards the name of the holder of the authorisation of Bacillus amyloliquefaciens CECT 5940 as a feed additive ( 1 )*
- *Commission Implementing Decision (EU) 2021/735 of 4 May 2021 concerning the extension of the action taken by the Irish Department of Agriculture, Food and the Marine permitting the making available on the market and use of the biocidal product Biobor JF in accordance with Article 55(1) of Regulation (EU) No 528/2012 of the European Parliament and of the Council (notified under document C(2021) 3026)*

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