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The EU's *Carbon Border Adjustment Mechanism*: An innovative or protectionist instrument to reduce greenhouse gas emissions outside of the EU?

On 14 July 2021, the European Commission (hereinafter, Commission) is expected to present its proposal for a Regulation on the establishment of a Carbon Border Adjustment Mechanism (hereinafter, CBAM). The CBAM aims at ensuring that "*the price of imports reflects more accurately their carbon content*" and is considered to be a key piece of EU legislation in the framework of the *European Green Deal*. At the beginning of June 2021, an incomplete draft of the Commission's Proposal on the establishment of a CBAM was leaked together with its annexes. The Commission's current Proposal for a Regulation states that its objective is to regulate greenhouse gas (hereinafter, GHG) emissions "*embedded in certain goods upon their importation into the customs territory of the Union, with the purpose of preventing the risk of carbon leakage".* While the CBAM is supposed to be an instrument to address climate change, the EU must also ensure that it does not become a protectionist or discriminatory instrument that introduces trade barriers for third country exporters to the EU and that it complies with WTO disciplines.

A recap of the road so far

In 2020, the Commission held a public consultation on the concept of a CBAM. According to the Commission's Inception Impact Assessment (*i.e.*, the legislative '*Roadmap*'), the CBAM would aim at ensuring "*that the price of imports reflect more accurately their carbon content*" (see *Trade Perspectives*, Issue No. 17 of 18 September 2020) and would only apply to imports into the EU. The public consultation listed four options for the CBAM: 1) "*A tax applied on imports at the EU border on a selection of products whose production is in sectors that are at risk of carbon leakage*"; 2) "*An extension of the EU ETS to imports*"; 3) "*The obligation to purchase allowances from a specific pool outside the ETS dedicated to imports, which would mirror the ETS price*"; and 4) "*Carbon tax (e.g. excise or VAT type) at consumption level on a selection of products whose production is in sectors that are at risk of carbon leakage*". On 10 March 2021, the European Parliament adopted its resolution on '*A WTO-compatible EU carbon border adjustment mechanism*', which provides the European Parliament's position regarding such mechanism. The resolution underlines that the European Parliament supports the introduction of a CBAM "*provided that is compatible with WTO rules and EU free trade agreements (FTAs) by not being discriminatory or constituting a disguised restriction on international trade*" and that a CBAM "*should be exclusively designed to advance climate*

objectives and not to be misused as a tool of protectionism, unjustifiable discrimination or restriction" (see *Trade Perspectives*, Issue No.6 of 26 March 2021).

Mirroring the EU's Emission Trading System beyond the EU

In the EU, certain emissions are currently regulated through the EU's Emission Trading System (hereinafter, ETS). The ETS is based on the '*cap-trade system'* principle, which means that a limited cap is set on the total amount of certain GHG emissions that can be emitted by defined industry sectors. Within the cap, the companies covered by the ETS system may receive free of charge or purchase, through public auctions, emission allowances, which they can subsequently trade with other covered companies. The cap is then linearly reduced over time so that the total emissions decrease (see *Trade Perspectives*, Issue No. 5 of 10 March 2017). The Commission now intends to design a new policy that aims at reducing third countries' GHG emissions, thereby addressing the issue of '*carbon leakage*', and incentivising other countries to join the climate change mitigation efforts. Carbon leakage refers to the situation in which EU production would move to non-EU countries that have less ambitious and laxer emission rules and thus lower costs of production related to climate policies.

The functioning of the proposed CBAM

On the basis of the Commission's current proposal, the CBAM would mirror the EU's ETS and would regulate GHG emissions embedded in certain third country products imported into the EU's Customs Union and belonging to five sectors, namely, cement, electricity, fertilisers, iron and steel, and aluminium. The CBAM would not apply to Norway, Iceland, and Liechtenstein, as those countries participate in the EU's ETS, nor to Switzerland, whose ETS is linked with the EU's ETS. On the basis of the Commission's current proposal, the UK would not be exempt, but it might change if the UK's ETS, which became operational on 1 May 2021, were to be linked to the EU's ETS. Article 2(3) of the draft Regulation specifies that a country may be exempt from the CBAM in case of an agreement "*linking the EU ETS and the third country emission trading system*."

The proposed CBAM would cover both direct and indirect GHG emissions, which are released during the production of the covered goods, as well as their upstream products (*i.e.*, inputs used during the goods' production process). While direct emissions take place during the production process of which the producer has direct control, indirect emissions relate to the production of electricity consumed during the production process.

Under the proposed CBAM, the importation of the covered goods would have to be made by any person that has been authorised by the CBAM Authority, referred as to an '*authorised declarant*'. The CBAM Authority would be established to administer the mechanism. Any authorised declarant must, annually, submit a CBAM declaration to the CBAM Authority containing information on: 1) The total quantity of goods imported during the previous calendar year; 2) The emissions embedded in the goods imported into the EU; and 3) The number of CBAM certificates corresponding to the total embedded emissions, which the declarant must surrender to the CBAM Authority annually. Notably, in case authorised declarants have already paid a carbon price "*in the country of origin for the declared emissions*" they may claim a reduction in the number of CBAM certificates to be surrendered. Authorised declarants must ensure that the declared embedded emissions are verified by an independent verifier accredited by the CBAM Authority. The authorised declarant would be held responsible by the CBAM Authority if it were to fail to comply with its obligations or if it provided falsified information.

Possible trade barriers ahead?

This mechanism is poised to significantly increase trade-related and administrative costs for third country exporters to the EU, as they would need to purchase CBAM certificates and comply with the reporting requirements. In addition, legal uncertainty might prevail at the outset, as the Commission envisages to detail many of the provisions contained in the draft

Regulation through a multitude of additional delegated acts. These additional costs may be a particular burden for developing country exporters importing their manufactured goods into the EU market. Most developing and least-developed countries enjoy duty- and or quota-free access to the EU, as a result of EU unilateral preference schemes or preferential trade agreements.

The potential points of frictions of the CBAM with WTO rules

Since it announced its intention to introduce a CBAM in the framework of the *European Green Deal*, the Commission has insisted that it would design a WTO-compatible instrument. It is still too early to fully determine the consistency of the CBAM with WTO rules. Indeed, the legal viability of this policy tool under WTO law may only entirely crystalise further down the legislative and implementation process. For the time being, however, it is possible to identify the main points of potential frictions between the proposed CBAM and WTO rules, notably the General Agreement on Tariffs and Trade (hereinafter, GATT) 1994 and the WTO Agreement on Subsidies and Countervailing Measures (hereinafter, SCM).

The Commission intends to implement a so-called '*notional*' carbon levy imposed on imports into the EU, mirroring the EU's ETS. Although the Commission avoided the use of the term '*tax*' in its draft Regulation, the CBAM may not escape the classification as "*internal tax or other internal charge*" under Article III:2 of the GATT. In that regard, the GATT prohibits levying internal taxes or charges on imported goods in excess of those applied to '*like*' domestic products. The potential point of friction relates to the maintenance of a free allocation of emission allowances under the EU's ETS, notably to industries "*deemed to be exposed to a significant risk of carbon leakage*". Instead of purchasing emission allowances through public auctions, as required under the EU's ETS, these industries, which are listed in the so-called '*carbon leakage list*', benefit from emission allowances free of charge. Similar to the imported products concerned by the CBAM, the EU's carbon leakage list covers, *inter alia*, cement, fertilisers, iron and steel, and aluminium. While third country exporters of such goods would be required to purchase CBAM certificates when accessing the EU market, EU producers of the '*like*' products would be exempt from buying emission allowances. The CBAM could, therefore, amount to an internal charge in excess of the one applied to '*like*' domestic products. Therefore, a CBAM would run the risk of being declared inconsistent with the GATT national treatment obligation.

In addition, the current regime of free distribution of emission allowances under the EU's ETS, if maintained, could prove incompatible with the SCM Agreement. More specifically, it could be considered as an actionable subsidy, which is defined as a financial contribution by a Government or public body conferring a benefit to a specific group of undertakings causing adverse effects to the interests of other WTO Members. By distributing for free to EU-established businesses the emission allowances that could have been auctioned, EU Member States would grant a financial contribution taking the form of a "*government revenue foregone that is otherwise due"*. Such financial Government contribution would appear to benefit a specific group of undertakings, potentially causing adverse effects and, more specifically, "*serious prejudice*" to the interests of WTO Members subject to the CBAM. Already at this stage, the free allowances granted to industries "*deemed to be exposed to a significant risk of carbon leakage*" has raised trade concerns. In December 2020 and January 2021, the US Department of Commerce and the US International Trade Commission considered these free allowances as countervailable subsidies materially injuring a US industry, in the context of the anti-subsidy investigation on Forged Steel Fluid End Blocks from Italy and Germany.

The CBAM looks poised to further amplify these subsidy concerns because domestic EU industries manufacturing cement, fertilisers, iron and steel, and aluminium would benefit from a double protection: 1) The free allocation of emission allowances; and 2) The '*notional*' ETS applying to third country products entering the EU market. The proposed text of the CBAM does not lay down any details concerning the phasing out of the free allowances. However, the Commission envisages to eliminate the regime of free allocation of emission allowances, which is to be included it in its proposal for a revision of the EU's ETS, to be published in the

coming months. As the phasing out is expected to be gradual, the allocation of free allowances under the ETS and the CBAM will, at least for some time, apply in parallel. Furthermore, the Commission's proposal to phase out free emission allowances may face political opposition from the European Parliament, which, in a Resolution of 8 March 2021, emphasised that the coupling of the CBAM and free allowances would not amount to a double protection for the EU industry. It should be considered that the parallel application of these two instruments would likely lead to a double protection for EU industries, thereby amplifying the subsidy concerns stemming from the free distribution of emission allowances.

A bumpy road ahead for the EU?

Specific points of friction between the CBAM and WTO rules are looming large and the Commission's draft Regulation already suggests that the implementation of the CBAM would significantly raise the trade-related and administrative costs for third country exporters, notably from developing countries, which have not been granted a more lenient compliance regime by the EU. All these elements notwithstanding, the CBAM remains an innovative policy tool to address third country GHG emissions, which could be explored. In this respect, it should be noted that such mechanism has seemingly gained *momentum* in other jurisdictions, as well. Canada is, for instance, studying the potential of this mechanism and has committed to discussing the idea with international partners.

Assessing the impact of EU trade agreements on biodiversity and ecosystems

On 19 May 2021, the European Commission's (hereinafter, Commission) Directorate-General for Environment published its *Methodology for assessing the impacts of trade agreements on biodiversity and ecosystems*, which provides "*a methodological framework for assessing the impact of EU Free Trade Agreements (FTAs) on biodiversity and ecosystems*" before an agreement enters into force (*ex-ante*) or after an agreement has entered into force and is being implemented (*ex-post*) to assess the impacts that the agreement has or might have on biodiversity and ecosystems. Such assessments must be seen in the broader context of the EU's efforts to limit the indirect effect of its trade agreements and the EU's increased emphasis on the enforcement of commitments under trade agreements, including under the Chapters on Trade and Sustainable Development.

The EU's Biodiversity Strategy for 2030

A year ago, on 20 May 2020, the Commission had published its *Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – EU Biodiversity Strategy for 2030 – Bringing nature back into our lives* (hereinafter, EU's Biodiversity Strategy 2030). The *EU's Biodiversity Strategy for 2030* stresses the "*need for urgent action*", highlighting the importance of nature and the natural resources it provides.

Notably, the EU's Biodiversity Strategy 2030 provides a list of actions that the EU commits to undertake by 2030, namely: 1) "*Improving and widening our network of protected areas*", which refers to having a larger percentage (at least 30%) of land and sea protected in the EU, equivalent to 4% more than in 2020 for land and 19% more for sea; 2) "*Developing an ambitious EU Nature Restoration Plan*", which aims at restoring ecosystems in both land and sea; 3) "*Enabling transformative change*", which refers to the need of creating and implementing a "*European biodiversity governance framework*"; and 4) Introducing appropriate instruments to address the global biodiversity challenge, which refers, *inter alia*, to trade policy that would "*actively support and be part of the ecological transition*".

With respect to trade policy, the EU's Biodiversity Strategy 2030 underlines the importance of ensuring that biodiversity-related provisions in EU trade agreements are fully implemented and enforced. Recent EU trade agreements contain, in the respective Chapters on Trade and Sustainable Development, a detailed provision on '*Biodiversity*'. Under such provision, the

parties commit to recognise "*the importance and the role of trade and investment in ensuring the conservation and sustainable use of biological diversity in accordance with relevant international agreements*" to which they are parties, namely the *Convention on Biological Diversity* and the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, to "*encourage trade in products which contribute to the sustainable use and conservation of biological diversity*", to "*implement effective measures, such as monitoring and enforcement measures, and awareness-raising actions, to combat illegal trade in endangered species of wild fauna and flora*"; and to exchange related information. Consequently, in its strategy, the Commission commits to "*better assess the impact of trade agreements on biodiversity, with follow-up action to strengthen the biodiversity provisions of existing and new*" (agreements).

The EU's new Methodology for assessing the impacts of trade agreements on biodiversity and ecosystems

In the context of the EU's Biodiversity Strategy 2030 and the related initiatives, on 19 May 2021, the Commission's Directorate-General for Environment published its *Methodology for assessing the impacts of trade agreements on biodiversity and ecosystems* (hereinafter, Methodology). According to the Methodology, "*Trade liberalisation introduces changes to economic sectors, increasing or decreasing demand – and therefore production – in trade partner countries*" and these "*changes can have an impact on biodiversity, ecosystems and the services they provide*". Therefore, the Commission highlighted the need to correctly identify the impacts on biodiversity generated through its Preferential Trade Agreements (hereinafter, PTAs) and the trade liberalisation they pursue. Notably, trade liberalisation is considered to influence economic sectors through increasing and/or decreasing demand for various products, including forestry, wood and fish.

The Methodology concerns both an *ex-ante* and *ex-post* assessment of PTAs More specifically, the *ex-ante* assessment would be based on projections made on the basis of certain indicators that are listed in the Methodology and on the scientific data available at the time of the assessment, while *ex-post* assessments would be based on the analysis of the changes on relevant indicators attributed to the implementation of a trade agreement.

A three-tiered methodology to better assess the impact of trade agreements

The Methodology provides for three stages that consist of: 1) A '*preparatory stage*'; 2) A '*method selection and impact logic*' stage; and 3) An '*impact assessment and related conclusions*' stage. The '*preparatory stage*' would provide an overview of the state-of-play in which the respective trade agreement operates, in order to provide a "*comprehensive overview of the range of (possible) impacts while focusing the attention – and resources – on assessing those impacts with the most significant consequences on biodiversity*". The '*method selection and impact logic*' stage would determine the "*level of analytical ambition to be used to assess priority impacts and setting out the analytical 'logic' for assessing impacts*". The '*impact assessment and related conclusions*' stage, other than assessing the impacts identified in the '*preparatory stage*', would aim at drawing "*conclusions and provide recommendations to the overall negotiation (ex-ante) and/or implementation evaluation (ex-post) process*".

Furthermore, the Methodology provides a detailed set of indicators that would be used to assess the impacts of preferential trade agreements on biodiversity and ecosystems. The indicators include, *inter alia*, land use, which refers to changes in both land and resources, and the ocean health index, which refers to a "*scientist-reviewed metric made up of the status, trend, pressures on and resilience of ecological and socio-political systems which contribute to "ocean health*"". The criteria on to be used for the assessment are: 1) Availability, namely the fact that the proposed indicator "*should be available for at least ten years to allow for simple trend identification and accessible for practitioners*"; 2) Descriptive power, namely that the indicator "*should meaningfully describe the biodiversity status*"; and 3) Interpretability, namely that the indicator "*should be understandable and relatively easy to interpret by (non-expert) stakeholders*".

The application of the new Methodology

After providing the criteria through which assessments of the impact of trade agreements on biodiversity and ecosystems would be carried out, the Study provides two examples showing how both the *ex-ante* and *ex-post* assessments would be carried out.

The example for an *ex-ante* assessment concerns the potential preferential trade agreement between the EU and Bolivia, which, as the Commission underlines, does not currently exist nor is it under negotiation. The example is based on the hypothesis that Bolivia would obtain full trade liberalisation for its agricultural commodities and focusses on the aspect of potential effects and forests and possible deforestation. In this context, the Methodology highlights that, on the basis of past trends, consultants conducting the assessment would be able to *"identify potential future deforestation in case of trade liberalisation*".

The *ex-post* example concerns the EU-Colombia Trade Agreement and focuses on the effects on ecosystems and deforestation. The Methodology notes that Colombia "*holds important ecosystems such as forest systems (e.g., the Amazon forest, mountain forest of the Andes, and the Chocó region), freshwater and coastal wetlands (including man-groves), grasslands and mountains*" and provides an overview of Colombia's governance and current practices in place to halt biodiversity and the degradation of ecosystems. After analysing the various indicators, the Methodology provides an assessment of the impacts of the trade agreement on biodiversity and ecosystems. The example concludes that the EU-Colombia Trade Agreement, most likely, did not cause additional deforestation, as the land use change attributed to the implementation of the trade agreement was determined at a minimal level.

The Methodology underlines that the determining factors for any assessment would depend on the data and characteristics of the relevant trading partner and would be carried out on a case-by-case basis.

Enhancing the assessment of EU trade agreements

The new Methodology developed by the Commission intends to enhance the existing Sustainability Impact Assessment (SIA) of EU trade agreements, which are carried out to determine the impacts that a trade agreement could potentially have on the economy, human rights and the environment, including on biodiversity. According to the Commission, the findings of the assessment under the new Methodology are supposed to improve the implementation and negotiation of the Chapters on Trade and Sustainable Development in EU trade agreements. Notably, the Methodology concludes that the "*Identified flaws in environmental governance"* may "*serve as input for the final TSD Chapter, strengthening the effectiveness and enforceability of the Chapter*". Indeed, it can be expected that the enhanced methodology assessing the effects of the implementation of trade agreements on biodiversity and ecosystems will pursue two objectives: 1) To draft more specific provisions on biodiversity in the Chapters on Trade and Sustainable Development; and 2) To improve the monitoring and, ultimately, the enforcement of the commitments on biodiversity and ecosystems. The EU's Chapters on Trade and Sustainable Development contain provision on how to address any "*disagreement between the Parties on any matter regarding the interpretation or application of this Chapter*". Such disagreements should be addressed through '*Government consultations*' and, if they were not to lead to a resolution of the matter, a '*Panel of Experts*' could be convened to review and adjudicate the matter. Given the EU's emphasis on the enforcement of trade commitments, including regarding the non-commercial commitments contained in the Chapters on Trade and Sustainable Development, it can be expected that this focus will soon extend to the impact on biodiversity and ecosystems.

A step in the right direction?

According to the Commission, the new methodology reflects the EU's commitment in achieving a "*global agreement on how to halt and reverse biodiversity loss in the next decade and beyond*" at the 15th meeting of the *Conference of the Parties* to the *Convention on Biological*

Diversity, which is scheduled to take place on 11 October 2021 in China. EU trading partners should carefully review the EU's new Methodology, as it will likely be the Commission's basis for future enforcement action.

First African food receives the status of geographical indication in the EU – Opportunities for commodity crops like coffee and cocoa?

South Africa's '*Rooibos*' dried leaves and stems, used to produce the tea bearing the same name, have become the first African food to receive the status of protected geographical indication (hereinafter, GI) in the EU. On the basis of *Commission Implementing Regulation (EU) 2021/865 of 28 May 2021 entering a name in the register of protected designations of origin and protected geographical indications ('Rooibos'/'Red Bush' (PDO)*, the name '*Rooibos*' or '*Red Bush*' may only refer to the dried leaves of 100% pure '*Rooibos*' derived from the plant *Aspalathus linearis* that has been cultivated or wild-harvested in designated local municipalities of the Western and Northern Cape Provinces in South Africa. This article looks at third country protected GIs in the EU in general and then at coffee and cocoa, which are other key commodities cultivated in Africa that could benefit from GIs.

Geographical Indications in the EU

Protecting certain products through GIs plays a major role in EU agricultural policy, as well as in ongoing international trade negotiations. The approach aims at supporting regional specialities, while, at the same time, enhancing and safeguarding their reputation. In the EU, *Regulation (EU) 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs* designates two types of GIs: 1) Protected Designations of Origin (PDO), which apply to foodstuffs that are produced, processed and prepared in a given geographical area using recognised '*know-how*'; and 2) Protected Geographical Indications (PGI), which indicate a link with the area in at least one of the stages of production, processing or preparation. Names that have become generic (*e.g.*, Dijon mustard) and names that conflict with the name of a plant variety or an animal breed may not be registered as GIs in the EU.

The legal concept of GIs as an Intellectual Property Right (IPR) aims at providing legal protection against imitations and usurpations of products, particularly food and agricultural products. The protection through GIs focuses on preventing the misuse of names, which could mislead consumers as to the origin of agricultural products and their quality or characteristics, which provide added culinary and economic value. The study *Evaluation support study on geographical indications and traditional specialities guaranteed protected in the EU*, published by the European Commission (hereinafter, Commission) on 20 May 2021, found that collected economic data from 3,207 products from across the EU protected by GIs represent a sales value of EUR 74.76 billion. Over one fifth of this amount results from exports outside the EU. The study found that the sales value of a product with a protected name is, on average, double that of similar products without such certification.

EU Geographical Indications for third country products

Before South Africa's '*Rooibos*' was registered, 32 third country GIs were already registered through direct applications by third countries under *Regulation (EU) 1151/2012*. This includes *Café de Colombia*, *Ron de Guatemala* rum, *Carn d'Andorra* beef, *Tequila* (alcoholic beverage from Mexico), *Darjeeling* tea (India), *Tørrfisk fra Lofoten* fish (Norway), *Phu Quoc* fish sauce (Vietnam), and *Khao Hom Mali* rice (Thailand). Other GIs are protected on the EU market through bilateral agreements between the EU and third countries.

At least two additional African food products are currently pursuing GI status in the EU under *Regulation (EU) 1151/2012*, namely *Penja* pepper (Cameroon) and *Argan* oil (Morocco). The

immense tradition and diversity in African agricultural products may benefit from the use of this intellectual property tool.

Ahead of the 4th African Union (AU) – European Union (EU) Agricultural Ministerial Conference on 22 June 2021, co-hosted by the African Union Commission and the European Commission, GIs represent an area that the EU intends to promote and export globally and, particularly, in Africa, playing a key role in improving agricultural relations between the two continents. The African Union's Strategy for GIs in Africa 2018-2023 (hereinafter, the Strategy) was endorsed in October 2017, and received the immediate support of the EU, which reportedly considers GIs as part of the Intellectual Property Rights Protocol of the African Continental Free Trade Area (AfCFTA). According to the African Union's Strategy for GIs, in general terms, two different categories of products from Africa could benefit from GIs: local handicraft products and commercial crops cultivated in Africa, such as cocoa and coffee. The Strategy notes that "*a large number of origin-linked food and handicraft products deserve to be preserved and promoted through a GI process*" and that "*the African continent also abounds in commercial crops that could benefit from a GI process to be differentiated on the international market by reference to the country or territory name*". Under the heading "*Key commercial products for geographical indications*", the Strategy notes that "*the GI process could be extremely relevant for commercial products that are emblematic of African countries, such as cocoa from Côte d'Ivoire – the first world producer; typically coloured cocoa from Cameroon; cocoa from São Tomé and Príncipe and coffee from Kenya and Ethiopia*". There appears to be definitively an interest to register as GIs not only local handicraft food products from Africa, but also commercial crops like cocoa and coffee.

In this context, the European Commission's 2021 study on GIs emphasises, under '*Impacts on third country GIs*', that the main objective pursued by stakeholders from third countries, when registering a GI at EU level through direct application, is the improved respect of IPRs. The GI scheme is perceived as a guarantee of quality for consumers, while protecting producers from unfair competition. However, the study argues that, "*due to the low share of EU market in the total sales from the third country GIs, no significant economic impact (in terms of price or sales) has been observed in the third country value chains following the EU registration*". Therefore, arguably, for third country GIs, it is more about the protection of IPRs than about immediate economic benefits.

Rooibos' thorny way to receive GI status

The application to register the name '*Rooibos'/'Red Bush*' as protected designation of origin (PDO) was published in the Official Journal of the EU on 8 June 2020 and culminated, almost one year later, in the adoption of *Commission Implementing Regulation (EU) 2021/865 of 28 May 2021*, adopted under *Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs*. The geographical area of production, drying, and oxidation of '*Rooibos'/'Red Bush*' is limited to a number of local municipalities in the Western and Northern Cape Province in South Africa. According to the Annex to *Implementing Regulation (EU) 2021/865*, "*the taste and specific composition of 'Rooibos'/'Red Bush' is directly related to the climate where it is grown. Cold wet winters, growth in spring and early summer and then maturity and polyphenol accumulation as the weather gets hotter and drier. It follows that, if Aspalathus linearis is grown in any other climate, it will not have the same characteristics as 'Rooibos'/'Red Bush' due to less polyphenol accumulation*".

The procedure to receive GI status was somewhat '*thorny*' because one month after the publication of the application, the Commission received the notice of opposition and the related reasoned statement of opposition from the United Kingdom. The opposition claimed that registration of the name '*Rooibos'/'Red Bush*' would not comply with the conditions laid down in Article 5 and 7(1) of *Regulation (EU) No 1151/2012*, as the proposed description of the product and of the raw materials were inconsistent. Article 5(1) provides that a "*'designation of origin' is a name which identifies a product: (a) originating in a specific place, region or, in exceptional cases, a country; (b) whose quality or characteristics are essentially or exclusively*

due to a particular geographical environment with its inherent natural and human factors; and (c) the production steps of which all take place in the defined geographical area". Article 7 concerns the product specifications that a protected designation of origin or a protected geographical indication must comply with. The UK also claimed that the proposed rules concerning labelling of '*Rooibos'/'Red Bush*' were not sufficiently specific and contradicted the conditions set out in *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*.

The Commission invited the interested parties to engage in appropriate consultations to seek agreement among themselves in accordance with their internal procedures. South Africa and the United Kingdom reached an agreement, which was communicated by South Africa to the Commission on 11 November 2020. South Africa and the United Kingdom concluded that the protection of the designation '*Rooibos'/'Red Bush*' (PDO) should be granted with some modifications to the so-called "*single document*", which contains the name of the product, a description of the product, including specific rules concerning packaging and labelling, a concise definition of the geographical area; as well as a description of the link between the product and the geographical environment or geographical origin. The modifications to the "*single document*" concerned the following: 1) A consistent reference to ten flavours; 2) References to the phytochemicals (*i.e.*, the chemical compounds produced by plants) aspalathin, namely that it contains between 0,02 and 1,16 % of it, and nothofagin, namely that it contains up to 0,4 % of it, 3) A reference to the fact that the specifications would be controlled according to the South African GI protection at origin; and 4) Revised rules concerning the labelling of the product. The Commission received a further notice of opposition and related reasoned statement of opposition from the *Swiss Association of Tea, Spices and related Products* (IGTG), which was later withdrawn after the Commission found it inadmissible and informed the IGTG that it would not send the IGTG an invitation to start consultations with South Africa.

Regulation (EU) No 1151/2012 details the application procedure for the registration of GIs. An application dossier must comprise, *inter alia*, the name and address of the applicant group, the single document, and the publication reference of the product specification. Where the application relates to a geographical area in a third country, or where an application is prepared by a group established in a third country, the application must be lodged with the Commission, either directly or via the authorities of the third country concerned. From 15 January to 9 April 2021, the Commission held a public consultation inviting citizens, organisations, as well as national and regional public authorities to contribute to the assessment of how to strengthen and revise the EU's GI system. The revision of *Regulation (EU) No 1151/2012* is expected to boost GIs' potential in contributing to the EU's new food policy, as outline in the EU's 2020 *Farm to Fork Strategy*. A legislative proposal revising *Regulation (EU) No 1151/2012* is supposed to be adopted in the fourth quarter of 2021 and an impact assessment is envisaged to support the Commission's proposal.

Outlook and conclusion

The registration of '*Rooibos*' as a GI in the EU will now allow South Africa's *Rooibos* industry to use the EU's PDO logo, which is well-recognised by consumers in Europe and which will indicate the value of Rooibos as a unique and exclusive product. Stakeholders in the food industry should closely monitor developments in the area of GIs and consider whether, for example, the registration of GIs for commercial crops like cocoa and coffee from certain African origins may add value and recognition to their products.

Recently Adopted EU Legislation

Trade Law

- *Council Decision (EU) 2021/964 of 26 May 2021 on the conclusion of the Voluntary Partnership Agreement between the European Union and the Republic of Honduras on forest law enforcement, governance and trade in timber products to the European Union*

- *Voluntary Partnership Agreement between the European Union and the Republic of Honduras on forest law enforcement, governance and trade in timber products to the European Union*

- *Council Decision (EU) 2021/972 of 14 June 2021 on the position to be taken on behalf of the European Union within the General Council of the World Trade Organization on the European Union request for an extension of the WTO waiver permitting autonomous trade preferences to the Western Balkans*

Trade Remedies

- *Commission Implementing Regulation (EU) 2021/983 of 17 June 2021 imposing a provisional anti-dumping duty on imports of aluminium converter foil originating in the People's Republic of China*

Customs Law

- *Commission Implementing Regulation (EU) 2021/970 of 16 June 2021 making imports of certain iron or steel fasteners originating in the People's Republic of China subject to registration*

Food Law

- *Commission Regulation (EU) 2021/976 of 4 June 2021 amending Annexes II, III and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for cycloxydim, mepiquat, Metschnikowia fructicola strain NRRL Y-27328 and prohexadione in or on certain products (1)*

- *Commission Regulation (EU) 2021/979 of 17 June 2021 amending Annexes VII to XI to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (1)*

- *Commission Implementing Regulation (EU) 2021/981 of 17 June 2021 concerning the renewal of the authorisation of a preparation of endo-1,4-beta-xylanase produced by Aspergillus niger CBS 109.713 and endo-1,4-beta-glucanase produced by Aspergillus niger DSM 18404 as a feed additive for poultry species, ornamental birds and weaned piglets (holder of the authorisation: BASF SE), and repealing Regulation (EC) No 271/2009 and Implementing Regulation (EU) No 1068/2011 (1)*

- *Corrigendum to Commission Delegated Regulation (EU) 2020/217 of 4 October 2019 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on*

classification, labelling and packaging of substances and mixtures and correcting that Regulation (OJ L 44, 18.2.2020)

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