

- **A busy EU trade agenda, but few tangible results in recent times**
- **New rules affecting imports and exports: Indonesia's efforts to assure the availability of raw and auxiliary materials**
- **EU adopts stricter maximum levels for cadmium and lead in food**
- **Recently adopted EU legislation**

### **A busy EU trade agenda, but few tangible results in recent times**

After this year's summer break and the related annual slowdown, the EU is resuming its busy trade agenda. Despite progress in ongoing EU trade negotiations, the entry into force of the EU-Mercosur Association Agreement and the modernised EU-Mexico Global Agreement remain uncertain. At the same time, political developments, such as the upcoming elections in Germany and France, risk affecting efforts by the European Commission (hereinafter, Commission) to advance negotiations.

#### ***The EU's updated trade policy with a greater focus on sustainability***

On 18 February 2021, the Commission published its Communication on the EU *Trade Policy Review - An Open, Sustainable and Assertive Trade Policy* (see *Trade Perspectives, Issue No. 4 of 26 February 2021*), which reconfirms and extends the EU's emphasis on sustainability commitments related to the environment, climate change, forests, and labour rights in the context of its trade policy. The updated EU Trade Policy builds on existing EU policies, but also introduces new elements that will be put forth in its trade negotiations, such as the intention to include a chapter on the concept of 'sustainable food systems' in trade agreements.

#### ***State-of-play of the ongoing EU trade negotiations***

Despite the challenging circumstances of the *Covid-19* pandemic, since March 2020, the EU has made progress in its trade negotiations with Australia, Chile, Indonesia, and New Zealand, respectively. Negotiations continue to be mainly conducted via video conferences and virtual gatherings.

On 6 September 2021, Australia's Minister for Trade, Tourism and Investment *Dan Tehan* stated that Australia aims at concluding trade negotiations with the EU by mid-2022. Minister *Tehan* stated that, despite the *Covid-19* pandemic, in the 2020/2021 fiscal year, Australia's exports to the EU have increased by 9.9%, reaching a value of EUR 7.5 billion. The most recent round of the EU-Australia trade negotiations was held from 1 to 11 June 2021 and, on 8 September 2021, during a Civil Society Dialogue meeting, the Commission stated that both parties had made good progress in the negotiations on intellectual property, services, technical barriers to trade, and State-owned enterprises. However, the Commission pointed out that discussions on rules of origin and geographical indications, as well as on the Chapter on Trade and Sustainable Development, particularly the issue of climate change mitigation, remained sensitive topics within the negotiations. The 12<sup>th</sup> round of negotiations is scheduled to take place from 11 to 22 October 2021.

With Chile, the 10<sup>th</sup> and most recent round of trade negotiations for the modernisation of the trade part of the EU-Chile Association Agreement was held from 19 April to 7 May 2021. In June 2021, the Commission reported that Chile had reiterated its intention to conclude trade negotiations before its Presidential Elections are to take place in November 2021. Negotiations are well advanced and, after the 10<sup>th</sup> round of trade negotiations, the Commission reported that substantial progress had been made regarding the protection of geographical indications, technical barriers to trade (excluding the Annex on Motor Vehicles), rules of origin, and the Chapter on Government Procurement. The Commission reported that both parties held preliminary discussions on market access, which helped clarify the mutual expectations, and agreed to continue working towards a new exchange of market access offers. The Commission did indicate that a conclusion before November 2021 appears rather ambitious. During the most recent round of negotiations, the EU introduced a proposal for a Chapter on Sustainable Food Systems. This is a new chapter that was announced in the context of the EU *Trade Policy Review*, and which will likely become a standard chapter in all EU trade negotiations. The Chapter on Sustainable Food Systems is supposed to provide a framework in which trade partners commit to cooperate in areas such as sustainability of food production, animal welfare, and antimicrobial resistance.

With respect to Indonesia, the most recent round of negotiations was held from 22 February to 5 March 2021. In June 2021, the Commission stated that negotiations with Indonesia were moving forward, but at a slow pace. After the 10<sup>th</sup> round of negotiations, the Commission reported that *“further progress was recorded in several chapters, but without major breakthroughs on the more difficult outstanding issues that would require change of policy or legislation”*. The *Covid-19* pandemic, as well as a number of bilateral trade irritants, have slowed down the negotiations and only limited progress has been reported in recent times.

The EU and New Zealand also remain committed to conclude their negotiations for a preferential trade agreement. The 11<sup>th</sup> round of trade negotiations was held from 28 June to 8 July 2021. Sensitive areas, where discussions are proving to be challenging, are intellectual property rights, digital trade, geographical indications, as well as trade and sustainable development. Notably, the EU’s market access offer for agricultural products appears to have slowed down the pace of negotiations, as in July 2021 New Zealand had made it clear that, as long as the EU did not table an improved offer for agricultural products, discussions on sensitive issues would not advance. Reportedly, the EU is currently revising its market access offer for agricultural products for submission to New Zealand before the 12<sup>th</sup> round of negotiations, which is supposed to take place in November 2021.

### ***The EU and the US launch the Trade and Technology Council***

On 2 December 2020, the President of the Commission *Ursula von der Leyen* proposed to set up a constructive bilateral agenda of negotiations between the EU and the US. On 15 June 2021, on the side-lines of the EU-US Summit, both parties agreed to establish the Trade and Technology Council (TTC).

According to the *EU-US Summit 2021-Statement*, the main objectives of the EU-US Trade and Technology Council would be to *“grow the bilateral trade and investment relationship; to avoid new unnecessary technical barriers to trade; to coordinate, seek common ground and strengthen global cooperation on technology, digital issues and supply chains”*. The Commission stated that, under the Trade and Technology Council, ten working groups would initially be established to discuss the following specific issues: 1) *“Technology standards cooperation (including AI and Internet of Things, among other emerging technologies)”*; 2) *“Climate and green tech”*; 3) *“Secure supply chains, including semiconductors”*; 4) *“ICT security and competitiveness”*; 5) *“Data governance and technology platforms”*; 6) *“The misuse of technology threatening security and human rights”*; 7) *“Export controls”*; 8) *“Investment screening”*; 9) *“Promoting SME access to and use of digital technologies”*; and 10) *“Global trade challenges”*. The working groups are supposed to translate the political decisions into deliverables, coordinate the technical work, and report back to the political level. Furthermore,

the EU-US Trade and Technology Council is supposed to address the EU-US commitment towards a partnership “*on the rebalancing of global supply chains in semiconductors*”.

On 7 September 2021, European Commissioner *Dombrovskis* and US Secretary of Commerce *Raimondo* held a meeting on the side-lines of the *Tallin Digital Summit* to discuss the agenda of the Trade and Technology Council, which will convene its first meeting in Pittsburgh, Pennsylvania, on 29 September 2021. According to the Commission, the Trade and Technology Council is supposed to serve as a *forum* for the EU and the US “*to coordinate approaches to key global trade, economic, and technology issues and to deepen transatlantic trade and economic relations based on shared democratic values*”.

### ***Delays still affecting the EU-Mercosur and EU-Mexico Association Agreements***

In April 2018 and June 2019, respectively, the EU concluded trade negotiations with Mexico and Mercosur. However, both agreements remain in the legal review phase, the so-called ‘*legal scrubbing*’, and its conclusion and ratification process remain unclear. In particular, uncertainty persists regarding the EU-Mercosur Association Agreement, which continues to face strong opposition in various EU Member States over environmental concerns.

With respect to the EU-Mercosur Agreement, in March 2021 the Commission and the European External Action Service (hereinafter, EEAS) had announced that the EU would not submit the text of the EU-Mercosur Association Agreement to the Council and the European Parliament before additional elements were negotiated with the Mercosur countries regarding issues related to the environment, namely forest fires and deforestation. The additional declaration is supposed to be legally binding and would be linked to the Chapter on Trade and Sustainable Development. Despite the efforts, certain EU Member States, such as France, have recently reiterated their opposition to the EU-Mercosur Agreement in its current form. The conclusion of this process remains uncertain, especially as France will take over the Presidency of the Council of the EU on 1 January 2022. On 15 July 2021, the Commission published [documents](#) concerning market access provisions, which had been agreed within the trade part of the EU-Mercosur Association Agreement and not made public before. These documents confirmed that, for the first time, the EU introduced an animal-welfare condition in a trade agreement with respect to laying hens and eggs. This means that, in order to benefit from zero tariff access to the EU market, Mercosur-based egg producers will have to certify their products as complying with the respective EU-equivalent rules for laying hen welfare. Such animal-welfare conditionality is a significant precedent in EU trade policy.

The EU concluded negotiations to modernise the EU-Mexico Global Agreement in June 2019, but also this agreement has not yet been signed, let alone entered into force. The EU-Mexico Global Agreement is a so-called ‘*mixed agreement*’, which means that it must be ratified not only by the EU, but also by the competent Parliaments within EU Member States. It is unclear what is holding up the agreement, but the Commission has, reportedly, proposed to split the EU-Mexico Global Agreement into three distinct agreements: 1) A political and cooperation agreement; 2) A trade agreement; and 3) An investment protection agreement. A similar approach already allowed for the EU-Singapore trade and investment agreements to move forward. Dividing the Agreement would allow the EU to ratify the trade part as an ‘*EU only*’ agreement under EU competence, without it having to be ratified by EU Member States’ Parliaments. It is still unclear whether the EU Member States gathered in the Council of the EU would agree to this proposal. If the separation of the EU-Mexico Global Agreement were to be accepted by the EU institutions and by Mexico, this might set a precedent for other agreements, notably the EU-Mercosur and the EU-Chile Association Agreement.

Business associations, including *BusinessEurope*, *Orgalim* representing Europe’s Technology Industries, and the European Automobile Manufacturers’ Association *ACEA*, have been advocating in favour of the ratification and implementation of the EU-Mercosur and EU-Mexico Agreements. For instance, in a 2020 position paper, the European Apparel and Textile Confederation *EURATEX* stated that “*ratification must be faster*” and that, in the case of the

EU-Mercosur Association Agreement, the lengthy process following the conclusion of negotiations “*penalises both sides of the Atlantic, leaving uncertainty with entrepreneurs*”.

### ***Moving ahead with the implementation of new commitments?***

EU trade policy is increasingly incorporating additional issues and the EU is placing even greater emphasis on sustainable development and climate change. The most recent example of the newly proposed Chapter on Sustainable Food Systems and the linkage of market access to animal welfare are important developments that trading partners and businesses should critically review and prepare for. Still, these new elements can only deliver when the EU also manages to finalise the agreements and ensures that they do enter into force. The current uncertainty regarding the EU-Mercosur and EU-Mexico agreements also has a negative effect on the EU’s credibility within its international trade negotiations.

### **New rules affecting imports and exports: Indonesia’s efforts to assure the availability of raw and auxiliary materials**

On 2 February 2021, the Government of Indonesia enacted *Government Regulation No. 28 Year 2021 concerning the Implementation of the Industrial Sector* (hereinafter, *GR No. 28/2021*), an implementing regulation to the *Law No. 11 Year 2020 concerning Job Creation* (hereinafter, *Job Creation Law*). *GR No. 28/2021* clarifies the changes brought by the *Job Creation Law* to *Law No. 3 Year 2014 concerning Industrial Affairs* (hereinafter, *Industrial Affairs Law*), including on the issues of supply of raw and auxiliary materials, guidance and supervision of conformity assessment bodies, and strategic industries. According to Indonesia’s Minister of Industry *Agus Gumiwang*, *GR No. 28/2021* is supposed to facilitate certain administrative requirements for businesses, as well as support and accelerate the growth of Indonesia’s industrial sector in order to allow domestic products to compete effectively on the global market.

#### ***Facilitating access to imported and domestic raw and auxiliary materials***

The *Job Creation Law* added an Article 48A to the *Industrial Affairs Law*, which stipulates that, in order to maintain the continuity of the national production process and industrial development, the Central Government and Regional Governments, in accordance with their respective authorities, are to facilitate the access to raw and auxiliary materials for purposes of the planned industrial needs. Article 1(2) and (3) of *GR No. 28/2021* provides for definitions of raw and auxiliary materials. Raw materials are unprocessed materials, semi-finished goods, and finished goods that can be processed into goods that have higher economic value (e.g., wood and plastic), while auxiliary materials refer to complementary materials used in the manufacturing process to make products according to the expected parameters (e.g., glue, fittings, and nails). Chapter II of *GR No. 28/2021* defines the following objectives: 1) Ensuring the availability of domestic and imported raw and auxiliary materials; and 2) Ensuring the distribution of such materials within the country.

#### ***Prioritising the use of domestic sources to increase the competitiveness of domestic industries***

According to Article 5 of *GR No. 28/2021*, industrial businesses are required to prioritise the use of domestic raw and/or auxiliary materials. This provision and its implementation should be subject to additional scrutiny, as it might conflict with the World Trade Organization’s (WTO) non-discrimination (MFN) and national treatment principles, as well as Indonesia’s relevant WTO commitments. The types of raw and/or auxiliary materials within the scope of *GR No. 28/2021* are listed in an Appendix to the regulation and include food and beverages, animal products, minerals, and chemical ingredients. The prioritisation of domestic materials appears to support the Ministry of Industry’s effort to reduce Indonesia’s imports of raw materials by up to 35% to USD 82 billion in 2022. In essence, the objective of the Government is to improve

the competitiveness of domestic industries and to increase the share of local goods used by businesses. Notably, the Government of Indonesia intends to guarantee the availability of domestic raw materials and auxiliary materials by mapping and determining the relevant production areas, introducing alternative materials, and developing the upstream and intermediate industry in accordance with natural resources.

On the basis of Article 7(a) of *GR No. 28/2021*, the Government is authorised to prohibit and restrict the export of raw materials out of Indonesia to ensure their availability for domestic needs. Indonesia’s Minister of Industry is empowered to propose such prohibition or restriction to Indonesia’s Minister of Trade. With respect to measures in the form of fiscal policies, proposals must be submitted to Indonesia’s Minister of Finance. Articles 9(4) and (5) of *GR No. 28/2021* stipulate the considerations for the prohibitions and restrictions:

Prohibitions	Restrictions
<ul style="list-style-type: none"> <li>• Limited availability of the materials;</li> <li>• The materials are needed as a buffer for the availability of raw and auxiliary raw materials for domestic industrial needs; and</li> <li>• Other national interests.</li> </ul>	<ul style="list-style-type: none"> <li>• The raw materials can be processed domestically, however their supply has not met the needs of the domestic industry;</li> <li>• When processed, the raw materials will have a high added value;</li> <li>• To maintain the raw materials’ price stability; and</li> <li>• Other national interests.</li> </ul>

Needless to say, that these drivers appear very discretionary and subject to undefined criteria, which may lead to discrimination and inconsistency vis-à-vis Indonesia’s WTO obligations and commitments.

***Facilitating imports of raw and auxiliary materials***

While the Government of Indonesia prioritises domestic sources, imports are facilitated in cases where domestic materials are not available and should the quality or number of domestic materials available be deemed insufficient. Pursuant to Article 10(2) of *GR No. 28/2021*, the import facilities take the form of: 1) Fiscal incentives; 2) Non-fiscal incentives; and 3) Fulfilment of the amount of imported goods, in accordance with domestic needs. While *GR No. 28/2021* does not set out the types of such incentives, fiscal incentives under Indonesia’s laws and regulations include, *inter alia*, an exemption from the payment of import duty or VAT. Non-fiscal incentives can take the form of a reduction of restrictions for the import of raw materials and the acceleration of export and import processes. On the other hand, it is still unclear, how the fulfilment of import needs is to be implemented. Nonetheless, for instance, for the import of rice, the Government of Indonesia usually assigns State-owned enterprises to carry out imports at a certain amount in case domestic production is not sufficient to fulfil domestic needs.

The imports of raw and auxiliary materials can only be carried out by industrial companies that have obtained a Business Identification Number that is valid as a Producer and Importer Identification Number. In Indonesia, the Producer and Importer Identification Number is a type of licence granted to individuals and companies that carry out import of raw materials to be used for production purposes. Where the import of raw and/or auxiliary materials is meant for small and medium scale businesses that are unable to import on their own, the import activity can be assisted by a so-called supply centre of raw and/or auxiliary materials that have obtained a General Importer Identification Number. Article 20 and 21 of *GR No. 28/2021* further prohibit industrial companies to sell the imported raw and auxiliary materials to other businesses, unless such materials are excess materials from the production process.

## ***The issuance of Commodity Balance***

One of the tools that are supposed to help the Government in ensuring the availability of raw materials and auxiliary materials is a '*commodity balance*'. Commodity balance refers to data and information regarding the national situation of consumption and production of certain commodities within a determined period and consists of: 1) Complete, detailed, and accurate data regarding the raw/auxiliary materials needed for the domestic industry; and 2) Complete, detailed, and accurate data regarding the supply of raw and auxiliary materials in Indonesia. As confirmed by the Deputy for Food and Agribusiness Coordination within Indonesia's Coordinating Ministry for Economic Affairs *Musdhalifah Machmud*, data within the commodity balance will serve as a benchmark for the Ministry of Trade in granting import and export permits of raw and auxiliary materials. It is also supposed to contribute to stabilising commodity prices in the market, as well as assuring the quality of the raw and auxiliary materials. Reportedly, strategic commodities with large contributions in terms of the export value to Indonesia's economy will be included in the commodity balance.

According to Article 12 of *GR No. 28/2021*, the commodity balance is to be determined through a coordination meeting organised by December of each year for the following year by Indonesia's Coordinating Ministry for Economic Affairs, along with the related ministries and institutions. The Government of Indonesia shall also cooperate with Indonesia's Central Statistics Agency and industrial companies to ensure the synchronisation of data. The commodity balance is to be determined based on the expected industrial needs and detailed data on the supply of raw and auxiliary materials, which shall then be applicable for the period of one year.

The commodity balance is considered as addressing the uncertainty with respect to the issuance of import permits for raw and auxiliary materials. As stated by the Executive Director of Indonesia's Employer's Association *Danang Girindawardana*, currently the list of imports tends to be proposed instantaneously by entrepreneurs whenever it is necessary, and the Government has the authority to approve or deny an application for an import permit. In the past, abrupt policy changes often led to unexpected denials of import permits and the process was often lengthy, overly-burdensome, and unpredictable, due to the involvement of multiple governmental agencies. Therefore, the introduction of the commodity balance is expected to create additional legal certainty in the business sector, considering that there will now be only one plan issued by the Central Government, along with the existence of centralised data that is applicable for a clear period of time.

## ***What to expect from the new regime?***

*GR No. 28/2021* entered into force on 10 February 2021. In general terms, *GR No. 28/2021* follows the Government of Indonesia's efforts to further develop the domestic manufacturing industry by guaranteeing the availability of certain goods. Relevant stakeholders should closely monitor the implementation of *GR No. 28/2021* and related developments, in particular as they relate to potential elements of inconsistency vis-à-vis Indonesia's WTO obligations and commitments.

## **EU adopts stricter maximum levels for cadmium and lead in food**

In August 2021, the European Commission (hereinafter, Commission) adopted stricter maximum levels of the food contaminants cadmium and lead through [Commission Regulation \(EU\) 2021/1323 of 10 August 2021 amending Regulation \(EC\) No 1881/2006 as regards maximum levels of cadmium in certain foodstuffs](#) and [Commission Regulation \(EU\) 2021/1317 of 9 August 2021 amending Regulation \(EC\) No 1881/2006 as regards maximum levels of lead in certain foodstuffs](#), respectively. According to the Commission, the measures, announced on 11 August 2021, are intended to further reduce the presence of carcinogenic contaminants in food and to make healthy food more accessible, a key aim of the EU's *Beating Cancer Plan*.

## **EU rules on contaminants, including heavy metals like cadmium and lead**

[Commission Regulation \(EC\) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs](#) establishes lists of foodstuffs that shall not be placed on the market when they contain a contaminant listed in the Annex to the Regulation, which provides for nine categories of contaminants, namely: 1) Nitrate; 2) Mycotoxins; 3) Heavy metals; 4) 3-monochloropropanediol (3-MCPD), 3-MCPD fatty acid esters and glycidyl fatty acid esters; 5) Dioxin and PCB; 6) Polycyclic aromatic hydrocarbons (PAH); 7) Melamine; 8) Inherent plant toxins; and 9) Perchlorate; at a level exceeding the maximum levels. [Commission Regulation \(EU\) 2021/1323](#) and [Commission Regulation \(EU\) 2021/1317](#) amend [Regulation \(EC\) No 1881/2006](#) as regards the maximum levels for cadmium and lead, respectively. Cadmium is a heavy metal that occurs naturally in the soil, and small molecules occur in water and air, as well as in pesticides and fertilisers. For example, the roots of cocoa trees absorb the metal, which subsequently finds its way into the tree leaves and cocoa beans. Lead occurs primarily in inorganic form in the environment and human exposure mainly occurs via food and water, as well as, to a limited extent, via the air, dust, and soil.

### **New maximum levels for cadmium in food**

On 30 January 2009, the [European Food Safety Authority](#) (hereinafter, EFSA) adopted an [opinion on cadmium in food](#) in which it concluded that cadmium is primarily toxic to the kidneys. In view of the toxic effects of cadmium on the kidneys, the EFSA established a tolerable weekly intake for cadmium of 2,5 µg per kg body weight. The EFSA further concluded that the mean exposure for adults across the EU is close to, or slightly exceeds, the tolerable weekly intake. It also concluded that certain subgroups such as vegetarians, children, smokers, and people living in highly contaminated areas may exceed the tolerable weekly intake by about 2-fold and that, therefore, the current exposure to cadmium at the population level needed to be reduced. Foods that contribute most of the dietary exposure to cadmium are cereals and cereal products, vegetables, nuts and pulses, starchy roots or potatoes, as well as meat and meat products. Following that opinion, the EFSA issued, on 17 January 2012, a [scientific report](#) on cadmium dietary exposure in the European population. Taking into account the EFSA's opinion and scientific report, new maximum levels for cadmium in baby foods and chocolate/cocoa products were established under [Commission Regulation \(EU\) No 488/2014 of 12 May 2014 amending Regulation \(EC\) No 1881/2006 as regards maximum levels of cadmium in foodstuffs](#). The maximum levels for cadmium in chocolate and cocoa entered into effect on 1 January 2019.

It is important to note that the Commission considered, at that time, that an immediate reduction of the existing maximum levels for products other than baby foods and chocolate/cocoa products was not yet appropriate. Therefore, it adopted [Commission Recommendation 2014/193/EU](#), which called on EU Member States to ensure that the already available mitigation methods were communicated and promoted to farmers, and started or continued to be implemented, in order to regularly monitor the progress of the mitigation measures by collecting occurrence data on cadmium levels in foodstuffs and to report the data, in particular on cadmium levels close to or exceeding the maximum levels, by February 2018. According to the Commission, an evaluation of the occurrence data, gathered after the implementation of the mitigation measures, showed that it is now achievable to reduce the presence of cadmium in many foodstuffs. Therefore, the Commission considered it appropriate to lower the existing maximum levels for cadmium and to establish maximum levels for other foodstuffs. The updated EU rules established in [Commission Regulation \(EU\) 2021/1323](#) apply to products such as beetroots, garlic, berries, trees nuts, fish and salt since 31 August 2021. Foodstuffs that were lawfully placed on the market before the entry into force of the Regulation may remain on the market until 28 February 2022.

## **2019 maximum levels for cadmium in chocolate/cocoa products caused concerns within the WTO**

New maximum levels for cadmium in chocolate and cocoa products were already established through [Commission Regulation \(EU\) No 488/2014](#) and apply since 1 January 2019. These levels led to serious concerns in cocoa-producing countries, such as Colombia, Côte d'Ivoire, Indonesia, Malaysia, and Peru, which have repeatedly raised the issue of the EU rules on cadmium in chocolate as a Specific Trade Concern (STC) at the meetings of the World Trade Organization's (hereinafter, WTO) Committee on Sanitary and Phytosanitary Measures (hereinafter, SPS Committee). More specifically, Peru argued that [Commission Regulation \(EU\) 488/2014](#) was “*not based on updated scientific principles with respect to the risk to human health*” and that the practical application amounted to a “*disguised restriction on international trade*” (for more details and an assessment under WTO rules, see [Trade Perspectives, Issue No. 21 of 16 November 2018](#)).

In its most recent submission to the SPS Committee ([G/SPS/GEN/1935](#)) of 16 July 2021, Peru argued that [Commission Regulation \(EU\) 488/2014](#) “*violates Article 2 of the SPS Agreement because sanitary measures should only be applied to the extent necessary to protect, inter alia, human health and life*”. Peru argued that the document of the [Joint FAO/WHO Expert Committee on Food Additives \(JECFA/91/SC\)](#) on the safety evaluation of certain food additives and contaminants of 5 March 2021 indicates that “*the cadmium contribution of cocoa products continues to be minor, even in countries where the consumption of such products is high*”. Peru also presented additional evidence that “*the presence of cadmium in chocolate and cocoa products does not constitute a public health concern and that the application of maximum levels of cadmium in chocolate and cocoa products is of no significant benefit in reducing dietary exposure to cadmium*”. Reportedly, Peru's complaint centres not only on whether the EU has any science to justify its standard, but also on whether the same science is equally being applied to other food containing cadmium, such as vegetables and cereals. The EU appears to have addressed the latter by adopting [Commission Regulation \(EU\) 2021/1323](#).

## **New maximum levels for lead in food**

In relation to lead, on 18 March 2010, the EFSA adopted an [opinion](#) on lead in food, identifying that lead can cause developmental neurotoxicity in young children and cardiovascular issues and nephrotoxicity in adults. The EFSA expressed concerns that the levels of dietary exposure to lead might affect neurodevelopment in foetuses, infants, and children. Cereal products and grains, vegetables, such as potatoes and leafy vegetables, and tap water are the most important contributors to dietary exposure from lead in Europe. In the Recitals to [Commission Regulation \(EU\) 2021/1317](#), the Commission states that, in light of developments at [Codex](#) level and of the most recent occurrence data, the dietary exposure to lead in food should be reduced within the EU by lowering the existing maximum levels or setting additional maximum levels for foodstuffs for which lower levels of lead are reasonably achievable, namely offal, certain foods for infants and young children, salt, and wild fungi. For the same reasons, the maximum levels for lead in wines are reduced and a maximum level for liqueur wine is established, as regards those products produced from future harvests. Finally, for those same reasons, but also in order to help fight fraudulent practices, such as the addition of lead chromate to turmeric, maximum levels for lead in spices are established. The new levels for lead apply since 30 August 2021. Foodstuffs placed on the market that exceeded the limits before that date may continue to be sold until 28 February 2022.

## **Comments and outlook**

The European Commissioner for Health and Food Safety [Stella Kyriakides](#) said, in a statement of 11 August 2021, that “*We know that an unhealthy diet increases the risk of cancer*” and that the measures on cadmium and lead aim at putting “*consumers at the forefront by making our food safer and healthier, as we committed to under the European plan to fight cancer. It is also a further step in strengthening the European Union's already high and world-class standards in the EU food chain and providing safer, healthier and more sustainable food to our citizens.*”



The sharp and ongoing criticism by certain cocoa-producing countries shows that the setting of maximum levels for contaminants, be it heavy metals like cadmium, the process contaminant 3-MCPD, or mycotoxins like aflatoxins or ochratoxin A, are often leading to trade frictions and may very well, as possibly in the case of maximum levels for cadmium in cocoa, lead to proceedings within the WTO dispute settlement system. Interested stakeholders should closely monitor the developments on the setting of maximum contaminant levels, such as the new maximum levels for lead and cadmium set by the EU, and ensure that their respective perspectives are taken into account and that the adopted rules are non-discriminatory and based on scientific evidence.

## Recently adopted EU legislation

### Trade Remedies

- *Commission Implementing Regulation (EU) 2021/1447 of 3 September 2021 amending Implementing Regulation (EU) 2020/1534 imposing a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*

### Customs Law

- *Commission Implementing Regulation (EU) 2021/1458 of 7 September 2021 fixing the import duties applicable to certain types of husked rice from 8 September 2021*

### Food Law

- *Commission Implementing Regulation (EU) 2021/1455 of 6 September 2021 approving the low-risk active substance *Bacillus amyloliquefaciens* strain AH2 in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011 ( 1 )*
- *Commission Implementing Regulation (EU) 2021/1457 of 1 September 2021 entering a name in the register of protected designations of origin and protected geographical indications ('Szegedi tükörpóty' (PGI))*
- *Commission Implementing Regulation (EU) 2021/1449 of 3 September 2021 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances 2-phenylphenol (including its salts such as the sodium salt), 8-hydroxyquinoline, amidosulfuron, bifenox, chlormequat, chlorotoluron, clofentezine, clomazone, cypermethrin, daminozide, deltamethrin, dicamba, difenoconazole, diflufenican, dimethachlor, etofenprox, fenoxaprop-P, fenpropidin, fludioxonil, flufenacet, fosthiazate, indoxacarb, lenacil, MCPA, MCPB, nicosulfuron, paraffin oils, paraffin oil, penconazole, picloram, propaquizafop, prosulfocarb, quizalofop-P-ethyl, quizalofop-P-tefuryl, sulphur, tetraconazole, tri-allate, triflurosulfuron and tritosulfuron ( 1 )*

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