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G7 Trade Ministers agree on ‘Digital Trade Principles’: Reducing barriers to digital trade?

On 22 October 2021, in order to support digital trade, the Trade Ministers of Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States, gathered in the *Group of seven* (hereinafter, G7), agreed to a number of ‘*Digital Trade Principles*’ related to: 1) ‘*Open digital markets*’; 2) ‘*Data free flow with trust*’; 3) ‘*Safeguards for workers, consumers, and businesses*’; 4) ‘*Digital trading systems*’; and 5) ‘*Fair and inclusive global governance*’. The growing importance of digital trade creates important commercial opportunities, but the legal challenges at the domestic and international level, due to divergences in regulatory approaches, negatively affect trade and show the importance of international cooperation to develop common approaches. While the ‘*Digital Trade Principles*’ agreed by the G7 Trade Ministers are not binding, they send an important signal for common approaches that could, if, implemented deliver important benefits for businesses.

Regulating digital trade

In recent times, digital trade has grown substantially, but the relevant legal frameworks are lagging behind. Efforts are underway, both domestically and internationally, for the rules to catch up with a fast-paced economic sector that has swept through global markets, particularly as a reaction to the constraints inflicted by the *Covid-19* pandemic. Broadly speaking, the Organisation for Economic Co-operation and Development (hereinafter, OECD) defines ‘*digital trade*’ as “*digitally enabled trade in goods and services, whether digitally or physically delivered, covering cross-border trade and data flows*”.

Efforts to develop common rules on digital trade are ongoing, notably in the context of the plurilateral negotiations for a *WTO Agreement on Trade-Related Aspects of Electronic Commerce* (see *Trade Perspectives*, [Issue No. 17 of 24 September 2021](#)). In parallel, countries around the world have also resorted to developing rules to facilitate digital trade through preferential trade agreements. This approach is understandable and in line with recent trade liberalisation trends, but has resulted in fragmented rules on key issues, such as data flows (*i.e.*, the “*movement of data through a system comprised of software, hardware or a combination of both*”), digital connectivity (*i.e.*, network connections), and interoperability (*i.e.*, the ability of a system to exchange and make use of information). That current state of affairs

makes it difficult for businesses to have legal certainty in their digital cross-border trading activities (see *Trade Perspectives*, Issue No. 17 of 24 September 2021).

The G7 Trade Ministers' '*Digital Trade Principles*', though only agreed by the G7 countries and not binding, could, given the proponents' economic power, influence the course of discussions across other international *fora* and shape the political and policy responses to the challenges to digital trade at the national, regional, and international level.

The G7's Trade Ministers' '*Digital Trade Principles*'

Digital trade has revolutionised the world and has evolved rapidly over the past few years, with important implications for international trade. Information and communication technologies, notably the Internet, have also transformed the way in which businesses exchange goods, services, data, and information, even more during the *Covid-19* pandemic with the increasing reliance on contactless technologies.

The G7 Trade Ministers underline their support for '*Open digital markets*' and their opposition to digital protectionism and digital authoritarianism, stating that the "*[d]igital and telecommunications markets should be competitive, transparent, fair, and accessible to international trade and investment*". To ensure easy access to the full resources of the Internet and the means to operate on it, the G7 Trade Ministers note that, "*[a]s the bedrock of a thriving and innovative digital economy, the internet must be open, free, and secure*". The G7 Trade Ministers support the permanent prohibition of Customs duties on electronic transmissions, including on the transmitted content, in accordance with the WTO *moratorium* on Customs duties on electronic transmissions, which was introduced in 1998, has been renewed at every subsequent WTO Ministerial Conference, and is currently under discussion in the runup to the 12th WTO Ministerial Conference that will take place from 30 November to 3 December 2021 in Geneva, Switzerland.

While digital trade is an integral part of global economic activity and international trade, its proper and seamless functioning requires, *inter alia*, the free flow of data across borders. The free flow of data has led to concerns about privacy and personal data protection due to the different standards related to the transfer and the potential (illicit) sale of personal information. In the context of the principle of '*Data free flow with trust*', the G7 Trade Ministers seek to address this challenge calling, *inter alia*, for the removal of unjustified obstacles to cross-border data flows, enforceable standards for data protection, cooperation to explore commonalities in regulatory approaches, and the promotion of interoperability of emerging technologies between the G7 countries.

In the context of the principle of '*Safeguards for workers, consumers, and businesses*', the G7 Trade Ministers underline that "*[l]abour protections must be in place for workers who are directly engaged in or support digital trade, providing decent conditions of work*". To protect consumers, the G7 Trade Ministers request that effective measures "*be in place to ensure a high level of consumer protection when purchasing goods and services online*". With respect to the safeguards for businesses, the G7 Trade Ministers call for, *inter alia*, the highest standards of cybersecurity and for effective and balanced intellectual property frameworks, noting further that "*[b]usinesses should not be required or coerced to transfer technology or provide access to source code or encryption keys as a condition of market access. At the same time, governments must retain sufficient flexibility to pursue legitimate regulatory goals, including health and safety*".

Despite increasing digitisation, trade documentation is still largely paper-based and more efforts are required to establish digital trading systems. To this end, the G7 Trade Ministers, in the context of the '*Digital trading systems*', note that, in order to "*cut red tape and enable more businesses to trade, governments and industry should drive forward the digitisation of trade-related documents. This includes through means of addressing legal, technical, and commercial barriers to the digitisation of paper processes*". The G7 Trade Ministers add that, "*[w]here governments use digital systems for processing imports, exports, and goods in transit,*

these should facilitate the flow of goods along the entirety of the supply chain". To facilitate easier, less costly, and more efficient international trade, the G7 Trade Ministers note that "[s]ingle trade windows should be developed to streamline stakeholder interactions with border agencies" and that "Governments should strive to develop these around common standards, with interoperability as a key goal, and in line with the best practice recommendations of the World Customs Organization".

Finally, in the context of '*Fair and inclusive global governance*', the G7 Trade Ministers seek to reinforce the importance of the WTO as the proper *forum* to: 1) Set common rules on digital trade aimed at securing benefits to workers, consumers, and businesses in developed and developing countries, while reserving the policy space for countries to regulate for legitimate public policy objectives; and 2) Address the digital divide between and within countries, especially least developed countries. Considering the rapid technological changes, the G7 Trade Ministers underline that the "*rules governing digital trade should be future-proofed and responsive to innovation and emerging technologies, so that workers, consumers, and businesses can harness their full potential. To assist this process, governments should review evidence and analysis, including from the OECD, where it can help to address rapid developments in digital trade*". In order to ensure an open, free, and fair environment in the digital age, the G7 Trade Ministers consider that "*[i]nternational standards for information and communication technologies should be developed in a way that complies with the six principles of the WTO Technical Barriers to Trade Committee*", namely: 1) Transparency; 2) Openness; 3) Impartiality and consensus; 4) Effectiveness and relevance; 5) Coherence; and 6) The development dimension.

Important implications for digital trade?

The growing importance of digital trade creates important commercial opportunities, but faces considerable existing and emerging barriers, such as, protectionist rules limiting access to markets, cumbersome and costly Customs procedures, unjustified restrictions to cross-border data flows, insufficient safeguards for consumers and businesses, and insufficiently digitally enabled trading systems, amplifying the need for international cooperation and global governance for digital trade. In this context, the '*Digital Trade Principles*' agreed by the G7 Trade Ministers, albeit not binding, send an important signal on common approaches that could, if implemented by regulators around the world, deliver important benefits for businesses and allow Governments to respond to new challenges raised by the rapid changes in technologies and business models.

For instance, according to the OECD, cross-border data flows have facilitated the establishment of global value chains. In fact, a [study](#) conducted by *Frontier Economic* for *DIGITALEUROPE*, a European trade association representing the digital technology industry, shows that the growth of the digital economy and the success of EU companies is largely dependent on the ability to securely transfer data. Additionally, establishing common standards for handling electronic documents, operating digital trade systems, and harmonising data management would dramatically reduce business costs and unnecessary bureaucracy. According to the *UK International Chamber of Commerce*, four billion documents support the functioning of the trading system every day, an incredible amount of paper, which could be significantly reduced given the technologies available.

The way forward

As more businesses and people embrace digital transformation, more efforts are required to enable secure free flow of data across borders and to drive forward the digitalisation of trading systems allowing the seamless flow of goods and services. The '*Digital Trade Principles*' agreed by the G7 Trade Ministers are not binding, but send an important signal and may set the trend. Regulators in the G7 countries and beyond must now take the next steps towards harmonised rules that aim at facilitating digital trade. Interested stakeholders should closely follow these developments and engage with policymakers to convey their industries' needs and priorities.

Reducing greenhouse gas emissions: Indonesia starts imposing a carbon tax using cap-and-tax and cap-and-trade systems from April 2022

In 2016, Indonesia ratified the *Paris Agreement*, an international treaty under the *United Nations Framework Convention on Climate Change* (UNFCCC), committing itself to reduce greenhouse gas (hereinafter, GHG) emissions. In 2022, Indonesia as the world's top exporter of thermal coal, will officially start to take a gradual approach in pricing and capping GHG through a carbon tax policy on the basis of *Law No. 7 of 2021 on Harmonisation of Tax Regulations* (hereinafter, *Law No. 7/2021*) of 29 October 2021. The carbon tax follows up on Indonesia's commitments in its Nationally Determined Contribution (NDC) target, submitted to the UNFCC on 22 July 2021, which aims at decreasing Indonesia's GHG emissions by 29% in 2030. The carbon tax policy in *Law No. 7/2021* will enter into force on 1 April 2022 and will initially apply to the coal-fired power plant sector. The Government has indicated that it wishes for it to be fully implemented also in other sectors by 2025.

Overview of Indonesia's new carbon pricing and tax mechanism

The principal framework governing the carbon tax regime in Indonesia was established by *Law No. 7/2021* and is part of Indonesia's broader tax reform objectives to harmonise and revise seven tax laws into one '*umbrella*' law. In broader terms, *Law No. 7/2021* aims at, *inter alia*, promoting sustainable economic growth, as well as the restoration of the environment. In 2020, Indonesia contributed for 2% of global GHG emissions, with approximately 37% of them originating from the manufacturing sector, followed by the power and transport sectors, with 27% each. Indonesia's Minister of Finance *Sri Mulyani* emphasised that the tax is part of the country's commitment to reduce GHG emissions by 29% on its own, or 41% through international support by 2030.

Article 13(6) of *Law No. 7/2021* stipulates that a carbon tax is payable on the purchase of goods containing carbon or activities that lead to GHG emissions, which exceed the required cap (*i.e.*, the required carbon limit). The Government of Indonesia has set a minimum carbon tax rate of IDR 30 per kilogram or IDR 30,000 (USD 2.1) per metric tonne of carbon dioxide equivalent (CO₂e). The carbon tax rate is lower than the minimum rate that had been proposed by the Ministry of Finance, which was IDR 75 per kilogram of CO₂e, particularly when compared to other countries that have already imposed similar carbon tax measures (*e.g.*, Singapore with SGD 5 (USD 3.7) per metric tonne and Chile with USD 5 per metric tonne).

The carbon tax is part of the broader carbon pricing mechanism through a cap-and-tax system, which is further regulated under *Presidential Regulation No. 98 of 2021 concerning Carbon Economic Value*. More specifically, there are two main mechanisms for carbon pricing: 1) Carbon trading through the cap-and-trade system, which refers to the trade of emissions between entities, in which entities that exceed the emission cap are able to purchase carbon certificates from other entities whose emissions are below the required cap; and 2) Non-trading instruments, such as the cap-and-tax system, which refers to a tax that is imposed on entities that have emissions above the cap. By 2025, the Government of Indonesia plans to open a carbon trading market using Indonesia's Stock Exchange as the platform, but the related mechanism is still under discussion within the Government.

Gradual implementation of the carbon tax

The carbon tax policy will be implemented in stages, starting with the coal-fired power plant sector on 1 April 2022. For cap-and-trade, entities that produce emissions in excess of the cap must purchase an *Emission Permit Certificate* (*i.e.*, *Sertifikat Izin Emisi*, SIE) from other entities whose emissions are below the cap or purchase an *Emission Reduction Certificate* (*i.e.*, *Sertifikat Penurunan Emisi*, SPE). The cap-and-tax applies when the entity is unable to purchase a SIE or SPE permit. In that case, the remaining emissions will be subject to the carbon tax. The carbon cap for the coal-fired power plant sector will be set and announced by Indonesia's Minister of Energy and Mineral Resources in 2022. Extending the application of

the carbon tax policy to other sectors will depend on the readiness of each sector, but full implementation should be achieved by 2025.

Carbon tax policy and its effects on local industries

The new carbon tax policy is intended to encourage the growth of the carbon market, carbon emissions trading, technology innovation, and the promotion of more efficient and environmentally friendly investments. According to the Chairman of the Indonesian Chamber of Commerce and Industry *Arsjad Rasjid*, even though the carbon tax imposed is still relatively low, if compared to other countries with the same measure in place, it is still considered appropriate for the local industry, considering that local industries are still recovering from the Covid-19 pandemic and that the imposition of higher carbon tax rates would be burdensome.

The main challenge for Indonesia's transition to zero emissions and for the carbon tax implementation is the fact that Indonesia is still largely reliant on coal-fired powered power plants, supplying 61% of Indonesia's electricity. Indonesia is the fifth largest producer of coal in the world, with domestic coal production of 561 million metric tonnes in 2020. Moreover, most local industries, such as paper, cement, and textiles, are some of the largest carbon emitters and still heavily dependent on coal for their production processes. According to Indonesia's Minister of Finance *Sri Mulyani*, abandoning the use of coal early would be detrimental and costly for Indonesia and its domestic industries.

Comparing Indonesia's carbon reduction measures with relevant EU measures

Compared to the EU, Indonesia is still new to pursuing emission reduction measures. In addition to existing measures, such as the EU's Emission Trading System (hereinafter, ETS), the EU is currently planning to implement a *Carbon Border Adjustment Mechanism* (hereinafter, CBAM), which is supposed to contribute to the EU's carbon emission reduction target of 55% by 2030. Through the CBAM, the EU looks poised to impose a carbon tax on imported goods that is expected to apply from 2026. The carbon tax on imported goods will apply to certain carbon-intensive exports to the EU, namely iron and steel, aluminium, fertilisers, electricity, and cement, which will be subject to the carbon tax and for which CBAM certificates must be purchased. Based on the available information, the comparison between Indonesia and the EU's emission reduction measures can be summarized as follows:

Measure	Indonesia	EU
Mechanism	Carbon trading (<i>i.e.</i> , cap-and-trade) and non-trading instruments (<i>i.e.</i> , cap-and-tax).	Cap-and-trade mechanism through the Emission Trading System (ETS) between EU Member States.
Implementation year of carbon tax or ETS	Indonesia adopted a carbon tax law in 2021, which will be implemented from 1 April 2022.	The EU ETS was launched in 2005.
Carbon tax	IDR 30 or USD 2.1 per metric tonne of carbon dioxide equivalent (CO ₂ e).	Differs by EU Member State.
Sectors applicable for carbon tax and/or ETS measure	Initially only the coal-fired power plant sector.	Electricity and heat generation, energy-intensive industry sectors (<i>i.e.</i> , oil refineries, steelworks, and production of iron, aluminium, metals, cement, etc.).
Impact on imported products	None.	The forthcoming CBAM will affect imported products: <ul style="list-style-type: none">• Products affected: carbon-intensive sectors: iron and steel; aluminium; fertilisers; electricity and cement; and

		<ul style="list-style-type: none"> Requirement for importers to buy carbon certificates and declare the imported goods.
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Table: Comparison of Indonesia's and the EU's emission reduction measures

The simple comparison above shows that the EU has already adopted an advanced framework to reduce emissions through the ETS and is planning to further decrease emissions through the forthcoming CBAM. The EU cap-and-trade mechanism, which was introduced in 2005, could be a good example for Indonesia, given that it has successfully reduced emissions by 35% between 2005 and 2019. With respect to imports, it is still uncertain whether Indonesia will adopt a similar carbon import tax measure in the near future. In fact, Indonesia voiced its opposition to the EU's carbon tax on imported goods and Indonesia's Minister of Trade Muhammad Lutfi stated that the EU's plan to introduce the carbon border tax could potentially disrupt global trade.

The future of Indonesia's emission reduction measure and the ASEAN context

As Indonesia has only recently adopted its new carbon tax policy, its actual implementation still remains to be seen and assessed. Considering Indonesia's dependence on coal, the implementation of the carbon tax must be well-regulated, transparent, and closely monitored by the Government and by related stakeholders in order to avoid unnecessary impacts affecting the supply chain of numerous industries. The Government of Indonesia should also consider the significance of the carbon tax policy for other sectors that significantly impact exports and imports. At the same time, these measures can lead to increased investments in renewable energy.

Finally, given that all ASEAN Member States have signed the Paris Agreement and have declared their commitments to reduce carbon emissions, ASEAN Member States could adopt a regional carbon emission trading system, similar to the EU's ETS. If not identical, the ETS mechanisms of all 10 ASEAN Member States could be aligned and based on the same principles and guidelines, thereby facilitating trade across the region, preserving ASEAN's centrality also on matters of trade and sustainable development, and providing a united front vis-à-vis ASEAN's trading partners when it comes to the reductions of GHG emissions and the fight against climate change.

Complementary to existing mitigation measures and “benchmark levels”, the EU intends to set maximum levels for acrylamide in certain foods

Complementary to existing mitigation measures and related “benchmark levels” (i.e., performance indicators used to verify the effectiveness of the mitigation measures), the European Commission (hereinafter, Commission) is currently considering the setting of maximum levels for acrylamide in certain foods. On 25 May 2021, the Commission transmitted a [document with a table](#) with benchmark and maximum levels for acrylamide in food to EU Member States and stakeholders for a targeted consultation. This article provides an overview of the regulation of acrylamide in food in the EU and possible implications for the food industry by the setting of maximum levels.

Acrylamide in food

Commission Regulation (EU) 2017/2158 of 20 November 2017 establishing mitigation measures and benchmark levels for the reduction of the presence of acrylamide in food defines acrylamide as “a low molecular weight, highly water soluble, organic compound which forms from the naturally occurring constituents asparagine and sugars in certain foods when prepared at temperatures typically higher than 120°C and low moisture”. According to Recital 3 of *Regulation (EU) 2017/2158*, acrylamide forms mainly in baked or fried carbohydrate-rich foods where raw materials contain its precursors, such as cereals, potatoes, and coffee beans.

In particular, starchy foods, such as potato and cereal products, which have been deep-fried, roasted or baked at high temperatures, have been shown to be affected, as well as instant coffee and cereal-based baby foods.

In 2015, the *European Food Safety Authority* (hereinafter, EFSA) carried out a comprehensive scientific review and, in its [scientific opinion](#) published on 4 June 2015, reconfirmed previous evaluations that acrylamide in food potentially increases the risk of developing cancer for consumers of all age groups. According to the EFSA's opinion, since acrylamide is present in a wide range of everyday foods, this concern applies to all consumers, while infants and young children are the most exposed age group based on their lower body weight. Based on current levels of dietary exposure, possible harmful effects of acrylamide on the nervous system, pre- and post-natal development, and male reproduction were not considered to be a concern by the EFSA. However, the current levels of dietary exposure to acrylamide across age groups indicate a concern with respect to its carcinogenic effects (see *Trade Perspectives*, [Issue No. 8 of 19 April 2019](#)).

The current EU rules on acrylamide in food

Commission Regulation (EU) 2017/2158 establishes mitigation measures and benchmark levels for the reduction of the presence of acrylamide in food. Benchmark levels are defined in Article 3(2) of *Commission Regulation (EU) 2017/2158* as “*performance indicators used to verify the effectiveness of the mitigation measures and are based on experience and occurrence for broad food categories*”. However, *Commission Regulation (EU) 2017/2158* does not set maximum permitted levels, as the EU has established for other chemical contaminants in certain foods, such as for 3-monochloropropane-1,2-diol (3-MCPD), glycidol, and polycyclic aromatic hydrocarbons (PAH), established in *Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs* which is based on *Council Regulation (EEC) 315/93 of 8 February 1993 laying down community procedures for contaminants in food*.

Article 1 of *Commission Regulation (EU) 2017/2158* defines its scope and lists the food products to which it applies: 1) French fries, other cut (deep fried) products and sliced potato crisps from fresh potatoes; 2) Potato crisps, snacks, crackers and other potato products from potato dough; 3) Bread; 4) Breakfast cereals (excluding porridge); 5) Fine bakery wares: cookies, biscuits, rusks, cereal bars, scones, cornets, wafers, crumpets and gingerbread, as well as crackers (*i.e.*, a dry biscuit, a baked product based on cereal flour), crisp breads and bread substitutes; 6) Coffee: roast coffee and instant (soluble) coffee; 7) Coffee substitutes; and 8) Baby food and, processed cereal-based food intended for infants and young children.

Food business operators, that produce and place on the market products that fall within these eight groups of foodstuffs, are required to apply detailed mitigation measures set out in Annexes I and II to *Commission Regulation (EU) 2017/2158*. Indeed, it appears that the levels of acrylamide in foodstuffs can be lowered by mitigation measures, such as the implementation of good hygiene practices and the application of procedures based on hazard analysis and critical control point (HACCP) principles. Annex IV to *Commission Regulation (EU) 2017/2158* establishes, *inter alia*, the following benchmark levels for the presence of acrylamide in foodstuffs: French fries 500 µg/kg; Potato crisps from fresh potatoes and from potato dough 750 µg/kg; Wheat based bread 50 µg/kg; Biscuits and wafers 350 µg/kg; Roast coffee 400 µg/kg; Instant (soluble) coffee 850 µg/kg; Coffee substitutes exclusively from cereals 500 µg/kg; Coffee substitutes exclusively from chicory 4,000 µg/kg; Baby foods, processed cereal based foods for infants and young children excluding biscuits and rusks 40 µg/kg; and Biscuits and rusks for infants and young children marketed for infants 150 µg/kg. Notably, *Commission Regulation (EU) 2017/2158* does not provide for sanctions for those food business operators that breach the benchmarks. As the [Guidance document on the Implementation of Commission Regulation \(EU\) 2017/2158](#) notes, “*benchmark level cannot be directly used as reference to evaluate if a product can be placed on the market or not*”. Benchmarks are based on EU Member States' data in the EFSA's comprehensive *European food consumption database*.

Towards the setting of maximum levels of acrylamide in certain food products

Recital 15 of *Regulation (EU) 2017/2158* indicates that, complementary to the mitigation measures laid out in that Regulation, “*the setting of maximum levels for acrylamide in certain foods should be considered in accordance with Regulation (EEC) No 315/93 following the entry into force of this Regulation*”.

On 25 May 2021, the Commission transmitted a table with new benchmark levels, as well as maximum levels for acrylamide in food to EU Member States and stakeholders for a targeted consultation. The document notes that “*any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission*”. The proposed benchmark levels essentially maintain those in Annex IV to *Commission Regulation (EU) 2017/2158*, but with a major difference in the benchmark level for biscuits and rusks for infants and young children marketed for infants, which is suggested at 100 µg/kg instead of the current 150 µg/kg. In addition to the benchmark levels, the Commission suggests, *inter alia*, the following maximum levels for acrylamide: French fries 850 µg/kg; Potato crisps from fresh potatoes and from potato dough 1,000 µg/kg; Wheat based bread 75 µg/kg; Biscuits and wafers 500 µg/kg; Roast coffee 500 µg/kg; Instant (soluble) coffee 1,000 µg/kg; Coffee substitutes exclusively from cereals 600 µg/kg; Coffee substitutes exclusively from chicory 4,500 µg/kg; Baby foods, processed cereal based foods for infants and young children, excluding biscuits and rusks, 50 µg/kg; and Biscuits and rusks for infants and young children 125 µg/kg.

Earlier plans for the setting of maximum levels objected by the European Parliament

In 2020, the Commission published a *draft Commission Regulation amending Regulation (EC) No 1881/2006 as regards maximum levels of acrylamide in certain foodstuffs for infants and young children* (hereinafter, Draft Commission Regulation). The draft was adopted by the EU’s Standing Committee on Plants, Animals, Food and Feed - Section “*Novel Food and Toxicological safety of the food chain*” (hereinafter, PAFF Committee) on 7 July 2020. However, on 8 October 2020, the European Parliament (hereinafter, Parliament) adopted a *Resolution on the Commission’s Draft Regulation*, calling on the Commission to withdraw it and to resubmit a more ambitious proposal establishing lower maximum levels of acrylamide for a series of foodstuffs. In particular, the resolution objected that the “*draft Commission regulation proposes to set maximum levels for two very specific categories of food only, namely for ‘biscuits and rusks for infants and young children’ (150 µg/kg, which corresponds to the current benchmark level) and for ‘baby foods, processed cereal based foods for infants and young children excluding biscuits and rusks’ (50 µg/kg, which is even 10 µg/kg higher than the current benchmark level of 40 µg/kg)*”.

From a procedural point of view, the Parliament objected against the draft Commission Regulation under the regulatory procedure with scrutiny according to Article 5a(3)(b) of *Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission*, which is still provisionally applicable on the basis of Recital 21 of *Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers*. Given the Parliament’s objection, the Commission was not allowed to move forward with the adoption of the proposed Draft Commission Regulation (see *Trade Perspectives, Issue No. 19 of 16 October 2020*).

Operators, whose products exceed a given acrylamide benchmark level, must review their mitigation measures and should aim at working towards lower levels. In addition to the benchmarks, the new suggested legislation proposes the introduction of maximum levels, which are directly used as reference to evaluate if a product may be placed on the EU market or not. If products were to exceed the maximum levels, the consequences would be far more serious than if they exceeded the benchmarks, as they could not be marketed. If products were already placed on the market, they would have to be recalled.

Outlook and conclusion

In its 2020 Resolution, the European Parliament had called on the Commission to withdraw the Draft Commission Regulation and submit a new draft to the PAFF Committee, which is the process that is currently going on, where the Commission is expected to present an amended measure for discussion and adoption. With the suggested setting of maximum levels, the Commission appears to follow the Parliament's request "*to set strict maximum levels not only for the two product categories proposed in the draft Commission regulation, but also for other product categories, and most urgently for biscuits and rusks that do not fall under the specific category of 'biscuits and rusks for infants and young children'*". More specifically, while the suggested maximum acrylamide level in baby foods, processed cereal based foods for infants and young children excluding biscuits and rusks of 50 µg/kg remains unchanged compared to the proposed level in 2020, the maximum level of acrylamide in more categories of food and, particularly, in biscuits and rusks for infants and young children of 125 µg/kg, may be seen as an attempt to accommodate the Parliament's concerns.

The ongoing discussions at EU Member States level appear to be focussed on whether to maintain the levels for acrylamide as benchmarks, rather than maximum levels, so as to avoid imposing an additional burden on food producers. However, in order to protect infants and children, maximum levels appear to be necessary. Interested food business operators should closely monitor the relevant developments and assess the potential implications for their products and supply chains.

Recently adopted EU legislation

Customs Law

- *Commission Delegated Regulation (EU) 2021/1934 of 30 July 2021 amending Delegated Regulation (EU) 2015/2446 as regards certain provisions relating to the origin of goods*

Food Law

- *Council Decision (EU) 2021/2025 of 15 November 2021 on the position to be taken on behalf of the European Union within the Council of Members of the International Olive Council, as regards a trade standard applying to olive oils and olive-pomace oils*
- *Commission Implementing Regulation (EU) 2021/1974 of 12 November 2021 authorising the placing on the market of dried fruits of *Synsepalum dulcificum* as a novel food under Regulation (EU) 2015/2283 of the European Parliament and of the Council, and amending Commission Implementing Regulation (EU) 2017/2470*
- *Commission Implementing Regulation (EU) 2021/1975 of 12 November 2021 authorising the placing on the market of frozen, dried and powder forms of *Locusta migratoria* as a novel food under Regulation (EU) 2015/2283 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) 2017/2470*

Trade Remedies

- *Commission Implementing Regulation (EU) 2021/2012 of 17 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional*

duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia

- *Commission Implementing Regulation (EU) 2021/2011 of 17 November 2021 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China*
- *Commission Implementing Regulation (EU) 2021/1976 of 12 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mono ethylene glycol originating in the United States of America and the Kingdom of Saudi Arabia*
- *Commission Implementing Regulation (EU) 2021/1930 of 8 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of birch plywood originating in Russia*

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