

- **EU trade agreements and sustainability: Changing course towards sanctions and a commercialisation of sustainability commitments?**
- **Is the ‘throwaway society’ headed to the bin? A look at the EU’s aim to “make sustainable products the norm”**
- **In view of the Ukraine war, the European Commission delays the Proposal for a Regulation on the Sustainable Use of Pesticides**
- **Recently adopted EU legislation**

This issue of *Trade Perspectives*® focuses on sustainability, notably within the context of its linkages to trade and the European Union’s legislative and regulatory initiatives. *FratiniVergano* strongly believes in the powerful role that trade can play in advancing sustainability both within the EU and internationally, especially if sustainability obligations are part of balanced, economically viable, and attractive packages of commitments and concessions that are enforceable and consistent with the applicable rules under the World Trade Organization’s system. New approaches are required, and we hope that the debate that we can contribute to with our newsletter will help guide the international trade community to find the sustainability solutions that our planet so desperately needs.

EU trade agreements and sustainability: Changing course towards sanctions and a commercialisation of sustainability commitments?

The EU is working towards shifting the approach to its Chapters on Trade and Sustainable Development (hereinafter, TSD) in the preferential trade agreements (hereinafter, PTAs) that it negotiates with third countries. On 22 March 2022, the Director-General of the European Commission’s Directorate-General for Trade, *Sabine Weyand*, stated, during the most recent meeting of the European Parliament’s Committee on International Trade (hereinafter, INTA), that there was a possibility to include a sanction mechanism in TSD Chapters to address non-compliance with commitments under such Chapter. Over the years, the European Commission (hereinafter, Commission) has been reluctant to include a sanctions-based mechanism in TSD Chapters, rather emphasising the cooperative and non-confrontational approach to resolving issues arising under such Chapters. The new approach could mean that the Commission is finally moving towards an economic value system in TSD Chapters.

The EU’s current approach to trade and sustainable development in trade agreements

The Economic Partnership Agreement (EPA) between the EU and the Caribbean Forum (CARIFORUM) country group, which comprises the 15 Caribbean Community States, along with the Dominican Republic, signed in 2008, was the EU’s first preferential trade agreement to include provisions on trade and sustainable development. Since the EU-Korea Free Trade

Agreement (hereinafter, EU-Korea FTA), signed in 2010, all PTAs concluded by the EU include a ‘*Chapter on Trade and Sustainable Development*’ or provisions to that effect. Such chapters generally focus on two key areas: labour and the environment. More specifically, the current TSD Chapters call for the effective implementation of fundamental labour conventions and multilateral environmental agreements (MEAs) and for the sustainable management of natural resources, in particular in the areas of forestry, fisheries, and biodiversity. The starting point is always that the potential negative sustainability implications of the trade agreements should be minimised, while the possible sustainability benefits accruing from the agreement should be maximised, in particular through enhanced cooperation and dialogue.

The debate in recent years

In a [Resolution](#) by the European Parliament of 18 May 2017 on the implementation of the EU-Korea FTA, the European Parliament noted that the progress made by Korea towards the objectives enshrined in the TSD Chapter of the EU-Korea FTA were not satisfactory. Discussions within the EU Institutions and EU Member States with respect to TSD Chapters, their functioning and their effectiveness started to gain momentum. On 11 July 2017, the Commission published a ‘*Non-Paper*’ on the “*Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements (FTAs)*”, which was intended to stimulate a discussion among EU Institutions (see *Trade Perspectives, Issue No. 15 of 28 July 2017*). The Commission’s *Non-Paper* summarised the EU’s approach to TSD Chapters and presented two options for discussion, further developing and refining said approach. The first option entailed closer internal cooperation, among EU Member States and EU Institutions, and externally vis-à-vis the EU’s trading partners. The second option suggested an approach currently used by the US and Canada in their respective FTAs, adding the possibility to apply sanctions at the end of dispute settlement proceedings in case of non-compliance and impacting trade or investment between the parties. Importantly, sanctions require a link to trade, namely a “*quantifiable harmful impact on bilateral trade or investment as a result of the FTA violation*” and the resulting withdrawal of concessions or fines would reflect this quantified impact.

Implementing and enforcing commitments under trade agreements

Following the Commission’s *Non-Paper*, the EU’s approach to trade and sustainable development was discussed by EU Trade Ministers at a Council meeting in February 2018 (see *Trade Perspectives, Issue No. 4 of 23 February 2018*) and, in this context, the then European Commissioner for Trade *Cecilia Malmström* presented a *15-Point Plan* to make the EU’s TSD Chapters in its PTAs more effective. In 2020, the debate was further fuelled by a proposal by the Ministers of Trade of France and the Netherlands, arguing that the EU should consider increasing tariffs against trading partners that fail to meet their commitments on sustainable development, as agreed in the chapters on trade and sustainable development (see *Trade Perspectives, Issue No. 10 of 22 May 2020*). In 2020, the EU already revamped its approach to monitoring the implementation and ensuring the enforcement of trade agreements, establishing the EU’s first Chief Trade Enforcement Officer and a complaints system (see *Trade Perspectives, Issue No. 22 of 27 November 2020*).

In parallel, the Commission also focused on the actual implementation and enforcement of TSD commitments and launched a case with Korea, based on concerns about certain Korean labour law provisions relating to the respect of the fundamental ILO principles of freedom of association and the right to collective bargaining, as well as the outstanding ratification by Korea of four fundamental ILO Conventions. In January 2021, the Commission published the [Report of the Panel of Experts](#) in the proceeding under Article 13.15 of the EU-Korea FTA, which confirms that Korea was in breach of its labour commitments under the EU-Korea FTA (see *Trade Perspectives, Issue No. 3 of 12 February 2021*). The Panel of Experts “*recommended*” that Korea bring its domestic regulation in line with the commitments under the EU-Korea FTA and relevant international conventions. Importantly, there is no mechanism to ensure the implementation of the recommendations and there are no sanctions in case of non-implementation. According to Article 13.15(2) of the EU-Korea FTA, the Parties must make “*their best efforts to accommodate advice or recommendations of the Panel of Experts*”

on the implementation of this Chapter". Members of the European Parliament stated that, while the decision of the panel was a step towards the protection of human and labour rights, there was uncertainty on the next steps since the agreement does not provide for an enforcement mechanism.

Reviewing the EU's approach on TSD Chapters and their enforcement

On 18 February 2021, the Commission published its Communication on *Trade Policy Review - An Open, Sustainable and Assertive Trade Policy*. Under the Trade Policy Review, the Commission committed to conduct a review of the 2018 *15-Point Plan* to improve the implementation and enforcement of the TSD Chapters. To inform and support this review, the Commission retained a research team from the London School of Economics (LSE) to conduct a comparative study and, on 20 February 2022, the Commission published the final report of the *Comparative Analysis of Trade and Sustainable Development (TSD) Provisions for Identification of Best Practices to Support the TSD Review*. The study notes that enforcement practices vary significantly across countries and across trade agreements with regard to "*the scope of obligations, their degree of enforceability, the role played by civil society in monitoring and their dispute settlement mechanisms*". Notably, the study notes that some agreements (e.g., the US-Cambodia Textile Trade Agreement) use an incentives-based approach, such as a higher tariff reduction, to induce compliance with TSD Chapters. The study further points out that a combination of cooperation and incentives might be an effective approach.

In March 2002, at a meeting of the European Parliament's INTA Committee, Director-General *Weyand* underlined that the Commission seeks to tailor the TSD Chapters to the needs and abilities of each trading partner, recalling that "*no one-size fits all*". Notably, in a change to the EU's current approach, Director-General *Weyand* stated that, in case of a breach of an international obligation and if the dispute settlement process under the TSD Chapter were not to result in an agreement or improvement, sanctions might be imposed to achieve compliance. Given the novelty of such approach for EU trade agreements, Director-General *Weyand* stated that discussions on this issue were still ongoing, in particular regarding the provisions of the agreement that would be linked to the possibility of sanctions as a last resort. Still, Director-General *Weyand* recalled that cooperation remained instrumental in the implementation of the international obligations on labour and the environment.

The Commission intends to publish the results of the TSD Review by the end of the first semester of 2022 and it will then be discussed within the European Parliament and the Council of the EU. Director-General *Weyand* already indicated that the EU-New Zealand Trade Agreement would be the first agreement under negotiation for which the EU would propose a TSD Chapter based on the revised approach and that, where negotiations had already been concluded, the Commission would consider updating the TSD Chapter on a case-by-case approach.

Achieving compliance – carrots or stick?

On the one hand, it appears natural that, if a country, or group of countries like the EU, wanted to link some of its preferential market access concessions to its trading partners' commitments on sustainability, it should be allowed to have recourse to trade sanctions (e.g., to withdraw the preferential market access concessions) in case its trading partners do not comply with their commitments, including on sustainability. On the other hand, the opposite must also be considered: trading partners within a preferential trading arrangement that have committed to comply with often costly and legally, economically and commercially challenging obligations on sustainability, should be rewarded with stable, effective and non-discriminatory preferential market access conditions to the other party's market if they complied with their sustainability obligations.

Should such preferential market access be distorted or prevented, such trading partners should be allowed to address this trade imbalance either by withdrawing some of their own commercial concessions or be given compensation. This is a simple and fair concept, which is

already one of the bedrocks of the WTO system and applied in many preferential trade agreements around the world. Arguably, PTA parties should be rewarded, for their efforts with respect to sustainability, with commercial advantages offered through preferential trading conditions and market access. A commercialisation of the respective sustainability commitments is important in order to make such efforts and commitments worthwhile. Notably, sustainability must not be unilaterally defined. Rather, the bilateral or plurilateral negotiations provide the ideal *fora* to jointly define what is sustainable and to accord preferential market access to those products that meet the requirements and can be certified as such. Should the sustainability criteria be violated or should the related economic incentives (*i.e.*, the preferential market access conditions) not be conferred, the obvious sanction would be a partial or full removal of the relevant preferences or the removal of an equivalent level of trade concessions (*i.e.*, ‘*compensation*’ or ‘*retaliation*’), respectively.

The issue is political as much as it is legal and economic in nature. The trade and legal instruments, to make trade and sustainable development work and be fair and attractive to both parties to a PTA, do exist (*e.g.*, preferences, sanctions, compensation, standards, conformity assessment procedures, etc.) and can be cleverly and innovatively used. So far, it was the political will that was lacking, but the Commission now appears to be changing its course.

Is the ‘throwaway society’ headed to the bin? A look at the EU’s aim to “make sustainable products the norm”

On 30 March 2022, the European Commission (hereinafter, Commission) published the [Communication on making sustainable products the norm](#) (hereinafter, Communication), which is intended to direct policy towards reducing the environmental impact of goods sold in the EU and to harmonise product-based environmental requirements across the EU. In the event the EU can move from “Communication” to action, the Commission’s ambitious agenda on sustainable products – which includes: 1) Its “cornerstone” [Proposal for a Regulation on Ecodesign for Sustainable Products](#) (hereinafter, ESPR), as well as related proposals for 2) [The Ecodesign and Energy Labelling Working Plan 2022-2024](#); 3) Targeted sectoral initiatives, including the [EU Strategy for Sustainable and Circular Textiles](#) and the [Revision of the Construction Products Regulation](#); and 4) [A Directive on empowering consumers for the green transition](#) – will be poised to have a significant impact on the products placed on the EU Single Market.

A look inside the Commission’s package of proposals on sustainable products

The Commission’s policy proposals on sustainable products are meant to further effectuate the broader policy objectives established by the *European Green Deal*, which the Commission notes is a “*growth strategy to transform the EU into a fairer and more prosperous society, with a modern, competitive, climate neutral and circular economy*”. In particular, the latter goal to create a more circular economy, which the Commission describes as one that “*aims to maintain the value of products, materials and resources for as long as possible by returning them into the product cycle at the end of their use, while minimising the generation of waste*” appears to have served as an important motivating factor for the proposals.

While the Communication sets forth a quartet of proposals, the “*heart*” of the Commission’s agenda is the proposed ESPR. The ESPR would repeal the EU’s existing [Ecodesign Directive](#), which sets mandatory energy efficiency requirements for energy-related products to improve their environmental performance. According to the proposed ESPR, the existing rules have limited product coverage and do not encourage circularity. The Proposal also notes that instruments, such as the [EU Ecolabel](#) – “*a label of environmental excellence that is awarded to products and services meeting high environmental standards throughout their life-cycle*” – are broader in scope, but “*have reduced impact due to the limitation of voluntary approaches*”. The proposed ESPR would harmonise environmental sustainability requirements by

expanding the scope of products subject to mandatory requirements and by incorporating circularity in the consumption of covered products (e.g., by incentivising: the use of durable and/or recyclable materials in the creation of a product; the reuse and/or refurbishment of products during their lifespan; and the responsible disposal of waste(s) associated with the product). Further, the proposed ESPR seeks to ensure a level playing field among all products placed on the EU market by extending coverage to relevant imported products.

Notably, the ESPR would aim at covering all physical goods placed on the EU market, except for a few sectors, such as food and medicinal products. Under the ESPR, most of the covered products' environmental impact would be determined at the design stage. Hence, the proposed ESPR envisages setting mandatory minimum requirements on how products should be made for specific product groups, targeting, *inter alia*, reliability, reusability, upgradability, reparability, possibility of maintenance and refurbishment, presence of substances of concern, resource use or resource efficiency, recycled content, and environmental impacts, including carbon and environmental footprint. Appropriate consideration of these factors yields the "ecodesign".

In addition to mandating minimum requirements for the make-up of covered goods, the ESPR also introduces complementary requirements pertaining to, *inter alia*, labelling and the provision of consumer information. Relatedly, and in yet another example of the ambitious scope of the Commission's plan, the proposed ESPR foresees a framework for a mandatory EU digital products passport, covering the entire value chain, to complement product manuals and standard labels. Under the ESPR, covered products may only be placed on the EU market if a product passport is available to "*market surveillance authorities (MSAs) and possibly Customs authorities, facilitating the verification of compliance and improving the efficiency of enforcement activities by Member States*". In furtherance of achieving the objectives pursued therewith, the ESPR would empower the Commission to adopt delegated acts providing for details on, *inter alia*, the lists of covered product groups, ecodesign requirements, labelling, the digital product passport, as well as reporting requirements. Commission delegated acts would also provide details on obligations imposed on manufacturers, importers, distributors, and retailers (including online marketplaces), relating to, *inter alia*, conformity assessment procedures for products, and technical documentation and information requirements.

While the ESPR is certainly the focal point of the Commission's Communication, the related proposals should not be overlooked, as they include "*a comprehensive set of actions that go beyond the ESPR*". For example, the [EU Strategy for Sustainable and Circular Textiles](#), which seeks to impose new mandatory ecodesign requirements for textiles, will be of particular interest to producers in that industry (and governments in producing countries). More specifically, the textile ecodesign requirements would be adopted through secondary legislation under the proposed ESPR. According to the European Commissioner for Environment, Oceans and Fisheries, Mr. *Virginijus Sinkevičius*, "*by 2030 textiles placed on the EU market should be long-lived and recyclable*" and "*made to a large extent of recyclable fibres*". Notably, new rules on textiles risk significantly limiting market access to the EU for so-called '*fast fashion*' imports, which have a relatively large carbon footprint and are associated with a lack of durability. Notably, imports of clothes from non-EU countries originate predominantly from developing countries (e.g., [Eurostat](#) shows that, in 2019, mainly from Bangladesh (EUR 15 billion, 19% of the total imports of clothes), Turkey (EUR 9 billion, 11%), India (EUR 4 billion, 5%), as well as Cambodia and Viet Nam (both EUR 3 billion, 4% each)).

Unconvinced by "circular" reasoning? Assessing potential sources of friction

Under the proposed ESPR, mandatory environmental sustainability requirements would be imposed on a broad range of products placed on the EU market, something that will clearly affect not only domestic businesses within the EU, but also those producers around the world that export covered products to the EU. For example, businesses will very likely need to adjust their products to meet the product design, labelling, and digital passport requirements imposed by the ESPR.

The burdens imposed by these requirements are apt to be felt unevenly, which makes it relatively likely that there will be voices of dissent sufficiently motivated to instigate a legal challenge at the WTO. While specific language in the eventual legislation and/or specific circumstances relating to a given impacted product may open the door to a number of claims under the General Agreement on Tariffs and Trade (GATT), one cannot help but see the potential for an invocation of the WTO's Agreement on Technical Barriers to Trade (hereinafter, TBT Agreement). Certainly, the new EU rules could be deemed to constitute "*technical regulations*" as defined by Annex 1.1 to the TBT Agreement. Assuming that this is the case, there are a number of possible obligations imposed by the TBT Agreement that could prove relevant to eventual ESPR-related measures. Consider, for example, Article 2.2 of the TBT Agreement, which, in its second sentence, requires that technical regulations of WTO Members "*not be more trade-restrictive than necessary to fulfil a legitimate objective*". A WTO Member might be able to reasonably assert that the EU has caused a stultifying effect on trade by unilaterally imposing costly requirements related to the makeup and packaging of products. This could prove a potent argument if other, less trade-restrictive, options exist. However, this is not to say that a violation of Article 2.2 of the TBT Agreement is a '*fait accompli*'. To the contrary, technical regulations might be justified if the trade-restrictiveness of those measures is "*necessary to fulfil a legitimate objective*". As the protection of the environment is deemed a "*legitimate objective*" by the TBT Agreement, the EU could ostensibly justify its measures by evidencing the "*necessity*" of the measure's trade-restrictiveness in connection with the fulfilment of this objective. Ultimately, while it is too early to predict case outcomes, it appears less risky to prognosticate that some degree of legal challenge awaits the sweeping reforms and new product requirements that are proposed for the ESPR.

Be a part of the (Eco)design team

The ESPR Proposal will now be reviewed by legislators in the European Parliament and the Council of the EU. Once agreed by the EU Institutions and adopted, the Commission will start adopting delegated acts on specific product groups, as required under the ESPR. While consulting *Trade Perspectives* is a solid first step in staying current on these matters, businesses trading with relevant products should pro-actively follow the discussions and contribute to the Commission's policy proposals and EU legislative debates, for example, through the structured stakeholder engagement platforms, such as the on-going Commission call for [feedback on the ESPR](#) opened on 3 April 2022 and until 31 May 2022. According to the Commission, "*all feedback received will be summarised by the European Commission and presented to the European Parliament and Council with the aim of feeding into the legislative debate*".

In view of the Ukraine war, the European Commission delays the Proposal for a Regulation on the Sustainable Use of Pesticides

On 23 March 2022, the European Commission (hereinafter, Commission) intended to publish a Proposal for a *Regulation on the Sustainable Use of Pesticides* reducing by 50% the use and risk of chemical pesticides, as well as the use of more hazardous pesticides by 2030. In view of the Ukraine war and its possible implications on food security, the publication was postponed until the summer. Together with the Proposal on the Sustainable Use of Pesticides, the Commission intended to propose a regulation on nature restoration targets, aiming at halting biodiversity loss in the EU. Both pieces of legislation represent essential elements of the EU's *Farm to Fork* Strategy and the *EU Biodiversity Strategy for 2030*. The Ukraine war is already having an impact on EU sustainability policies. In fact, it appears that a more sustainable use of pesticides seems difficult to achieve at times when agricultural production needs to be increased for purposes of food security and market stability.

The current framework on sustainable use of pesticides

Currently, *Directive 2009/128/EC of the European Parliament and of the Council establishing a framework for Community action to achieve the sustainable use of pesticides* (hereinafter, the Sustainable Use Directive, or SUD) is part of a strict legal framework for authorising and controlling the use of pesticides in the EU. In this context, the term ‘*pesticide*’ refers to plant protection products as defined by Article 3(10)(a) of the SUD as “*a plant protection product as defined in Regulation (EC) No 1107/2009*”. Essentially, ‘*plant protection products*’ contain active substances (*i.e.*, chemical elements and their compounds, as they occur naturally or by manufacture) and have a wide variety of uses. On products’ labels, the term is usually replaced by a more precise description of the product-type, such as fungicide, insecticide or herbicide.

Together with the SUD, *Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market*, *Regulation (EC) No 396/2005 of the European Parliament and of the Council on maximum residue levels of pesticides in or on food and feed of plant and animal origin*, and *Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products* provide the legislative basis for the safe and sustainable use of pesticides in the EU. ‘*Sustainable use of pesticides*’ is not defined in the SUD, but its Article 1 provides that the Directive aims at achieving a sustainable use of pesticides “*by reducing the risks and impacts of pesticide use on human health and the environment and promoting the use of integrated pest management and of alternative approaches or techniques such as non-chemical alternatives to pesticides*”. The objective is, therefore, to minimise the impact of pesticides on human health and the environment through reduced dependency, and through the increased use of low risk and non-chemical pesticides. ‘*Non-chemical methods*’ are defined in Article 3 No. 8 of the SUD as “*alternative methods to chemical pesticides for plant protection and pest management, based on agronomic techniques such as those referred to in point 1 of Annex III [e.g., crop rotation, use of resistant/tolerant cultivars, and preventing the spreading of harmful organisms by hygiene measures], or physical, mechanical or biological pest control methods*”.

Actions to achieve a sustainable use of pesticides

The SUD provides for a range of actions to achieve a sustainable use of pesticides by reducing the risks and impacts of their use on human health and the environment. One of its key elements is the implementation of an Integrated Pest Management (hereinafter, IPM) system. General principles for IPM are laid down in Annex III to the SUD, and Article 3 No. 6 defines IPM as the “*careful consideration of all available plant protection methods and subsequent integration of appropriate measures that discourage the development of populations of harmful organisms and keep the use of plant protection products and other forms of intervention to levels that are economically and ecologically justified and reduce or minimise risks to human health and the environment*”. In essence, IPM emphasises the growth of a healthy crop with the least possible disruption to agro-ecosystems and encourages natural pest control mechanisms. A second key element is the promotion of alternative approaches or techniques, such as non-chemical alternatives to pesticides.

Given the diversity of agricultural cultivation across the EU, the SUD is largely based on actions to be taken at EU Member State level. More specifically, it requires EU Member States to establish National Action Plans setting out quantitative objectives, targets, measures, and timetables to reduce the risks and impacts of pesticide use. The main actions relate to: 1) Training of users, advisors and distributors of pesticides; 2) Inspection of pesticide application equipment; 3) The prohibition of aerial spraying; 4) The protection of the aquatic environment and drinking water; 5) Limitation of pesticide use in sensitive areas; 6) Information and awareness raising about pesticide risks; 7) Systems for gathering information on pesticide acute poisoning incidents, as well as chronic poisoning developments, where available.

It should be noted that the sustainable use of pesticides and organic farming are two different concepts. While the sustainable use of pesticides in agriculture, in general, concerns a reduction of their use and the promotion of alternative approaches or techniques, organic production is based on the key principle of limiting the use of artificial fertilisers, herbicides, and pesticides at all. Therefore, in organic farming, only very few substances are authorised to be used under [Regulation \(EU\) 2018/848 of the European Parliament and of the Council on organic production and labelling of organic products](#). Such authorisation has been granted by [Commission Implementing Regulation \(EU\) 2021/1165 authorising certain products and substances for use in organic production and establishing their lists](#), which provides that only the active substances listed in Annex I to that Regulation may be contained in pesticides used in organic production. This concerns, for example, 'basic substances' like vinegar, low risk active substances, microorganisms, and other substances like 'ethylene' for clearly defined uses.

Reduction targets in the Commission's *Farm to Fork Strategy*

As part of the [European Green Deal](#), the Commission's [Farm to Fork Strategy](#) highlights the need for shifting to a fair, healthy, and environmentally-friendly food system, while also stressing the importance of farmers, who are key to managing the transition. In the [Farm to Fork Strategy](#), the Commission announced 50% reduction targets with respect to the use and risk of 'chemical pesticides' and in the use 'more hazardous pesticides' by 2030. 'More hazardous pesticides' mainly refers to the so called 'candidates for substitution', which EU Member States are to regularly examine with the aim of replacing them by pesticides containing active substances that require less risk mitigation or by non-chemical control or prevention methods. The Commission [notes](#) that the 50% reduction target in use and risk of chemical pesticides would be measured based on the quantities of active substances contained in the pesticides, which are placed on the market in each EU Member State, and the hazard properties of these active substances. The reduction of the risk would be based on the methodology based on [Harmonised Risk Indicators](#), which were first developed to measure trends in the use and risk of pesticides under the SUD (but excluding non-chemical pesticides). The baseline for the pesticide targets will be the average of the years 2015 to 2017, as these were the three most recent years at the time of the announcement of the *Farm to Fork Strategy* in May 2020. A three-year baseline was chosen because pesticide sales and use differ from year to year due to seasonal factors. According to the Commission, the 50% reduction target in the use of more hazardous pesticides would be measured based on sales data for the more hazardous pesticides, again using a three-year baseline of the average from 2015 to 2017.

The review of the Sustainable Use of Pesticides Directive

Numerous petitions, letters, and European Parliamentary questions concerning the use of pesticides show growing societal concerns. The [Report from the Commission to the European Parliament and the Council on the experience gained by Member States on the implementation of national targets established in their National Action Plans and on progress in the implementation of the SUD](#), the [European Parliament resolution of 12 February 2019 on the implementation of Directive 2009/128/EC on the sustainable use of pesticide](#), and a report of the European Court of Auditors on [Sustainable use of plant protection products: limited progress in measuring and reducing risks](#), point to weaknesses in the implementation, application, and enforcement of the SUD across EU Member States and a failure to sufficiently achieve its overall objectives. In particular, the application and enforcement of IPM and the prioritisation of the use of non-chemical methods has been weak. National Action Plans adopted and implemented by EU Member States under the SUD often lack adequate content and commitment to implement the SUD's requirements. The Commission is, therefore, currently [evaluating](#) the SUD and assessing the impacts of possible future measures intended to significantly reduce the use and risk of chemical pesticides.

Since the numerical value of the pesticide reduction target was already included in the *Farm to Fork Strategy*, the main outstanding issue now relates to whether the target should be made legally binding or not. According to a leaked draft proposal, the Commission intends to propose

the targets to be legally binding at the EU level, with EU Member States being allowed to deviate from the 50% level within the parameters of a binding formula. The document states that *“this formula permits member states to justify taking account of changes or expected changes in national circumstances since 2011 and historical progress in setting national targets”*. The draft proposal also includes an ambitious prohibition of all chemical pesticides in sensitive areas, such as public parks or gardens, and urban green areas. Derogations may be granted by competent authorities for a limited period of time, never exceeding 120 days. Spraying pesticides would also be prohibited, except under certain derogations, for example where there is no viable alternative application method to the aerial application. By delaying the publication of the Proposal for a *Regulation on the Sustainable Use of Plant Protection Products* reducing the use and risk of chemical pesticides in half by 2030, it appears that the EU has paused some of its green ambitions with the pretext of the Ukraine war and its possible implications on food security.

Recently adopted EU legislation

Trade Law

- *Commission Implementing Regulation (EU) 2022/528 of 1 April 2022 amending Annexes V and XIV to Implementing Regulation (EU) 2021/404 as regards the entries for the United Kingdom and the United States in the lists of third countries authorised for the entry into the Union of consignments of poultry, germinal products of poultry and fresh meat of poultry and game birds*

Trade Remedies

- *Commission Implementing Decision (EU) 2022/505 of 23 March 2022 concerning exemptions from the extended anti-dumping duty on certain bicycle parts originating in the People’s Republic of China pursuant to Regulation (EC) No 88/97 (notified under document C(2022)1693)*
- *Commission Implementing Regulation (EU) 2022/558 of 6 April 2022 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain graphite electrode systems originating in the People’s Republic of China*

Food Law

- *Commission Recommendation (EU) 2022/561 of 6 April 2022 on monitoring the presence of glycoalkaloids in potatoes and potato-derived products*
- *Commission Recommendation (EU) 2022/553 of 5 April 2022 on monitoring the presence of *Alternaria* toxins in food*
- *Commission Implementing Regulation (EU) 2022/497 of 28 March 2022 amending and correcting Annexes I and II to Implementing Regulation (EU) 2021/403 as regards certain model animal health certificates, animal health/official certificates and declarations for the movements between Member States and the entry into the Union of consignments of certain species and categories of terrestrial animals and germinal products thereof*
- *Commission Recommendation (EU) 2022/495 of 25 March 2022 on monitoring the presence of furan and alkylfurans in food*

Ignacio Carreño, Tobias Dolle, Lourdes Medina Perez, Stella Nalwoga, Sean Stacy, and Paolo R. Vergano contributed to this issue.

Follow us on twitter [@FratiniVergano](#)

To subscribe to *Trade Perspectives*®, please click [here](#). To unsubscribe, please click [here](#).

FRATINI VERGANO specialises in European and international law, notably WTO and EU trade law, EU agricultural and food law, EU competition and internal market law, EU regulation and public affairs. For more information, please contact us at:

FRATINI VERGANO – EUROPEAN LAWYERS

Boulevard Brand Whitlock 144, 1200 Brussels, Belgium. Telephone: +32 2 648 21 61, Fax: +32 2 646 02 70. www.fratinivergano.eu

Trade Perspectives® is issued with the purpose of informing on new developments in international trade and stimulating reflections on the legal and commercial issues involved.

Trade Perspectives® does not constitute legal advice and is not, therefore, intended to be relied on or create any client/lawyer relationship.

To stop receiving *Trade Perspectives*® or for new recipients to be added to our mailing list, please contact us at TradePerspectives@fratinivergano.eu

Our privacy policy and data protection notice is available at <http://www.fratinivergano.eu/en/data-protection/>