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A possible breakthrough following the postponement of the vote on the EU's Carbon Border Adjustment Mechanism (CBAM) by the European Parliament?

On 14 June 2022, the *European People's Party* (EPP), the *Progressive Alliance of Socialists and Democrats* (S&D), and the *Renew Europe* groups in the European Parliament agreed on a compromise text regarding the European Commission's (hereinafter, Commission) Proposal for a Carbon Border Adjustment Mechanism (hereinafter, CBAM) and the phasing-out of the emission-free allowances under the EU's Emission Trading System (hereinafter, ETS).

On 8 June 2022, the European Parliament's plenary had rejected the *Draft Report on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757*, which led to the postponement of the vote on the Draft Report on the CBAM. The compromise text on the CBAM agreed by the parliamentary groups will be submitted for a vote at the European Parliament's plenary meeting on 22 June 2022. While the compromise intends to move the CBAM forward, a controversial issue introduced in the compromise text, namely the export rebates for EU production subject to carbon pricing, might pose additional questions on the CBAM's compatibility with international trade rules.

A recap of the proposed mechanism

The CBAM aims at ensuring that "*the price of imports reflects more accurately their carbon content*". The Commission's Proposal for the CBAM states that its objective is to regulate greenhouse gas (hereinafter, GHG) emissions "*embedded in certain goods upon their importation into the customs territory of the Union, with the purpose of preventing the risk of carbon leakage*". The Commission's Proposal provides that the CBAM would mirror the EU's ETS and would regulate GHG emissions embedded in certain third country products imported into the EU Customs Union in the following sectors: 1) Cement; 2) Electricity; 3) Fertilisers; 4) Iron and steel; and 5) Aluminium. More specifically, the CBAM aims at addressing the issue of '*carbon leakage*', which refers to the situation in which EU production moves to non-EU

countries that have less ambitious and laxer emission rules and, thus, lower costs of production related to climate policies (see *Trade Perspectives*, Issue No. 6 of 26 March 2021) and at incentivising other countries to join climate change mitigation efforts.

In the EU, certain emissions are currently regulated through the EU's ETS. The ETS is based on the '*cap-trade system*' principle, which means that a limited cap is set on the total amount of certain GHG emissions that can be emitted by defined industry sectors. Within the cap, the companies active in sectors covered by the ETS may receive emission allowances, either free of charge (*i.e.*, ETS free allowance allocation, which is used to safeguard the competitiveness of the regulated industries and to avoid carbon leakage) or purchased through public auctioning, which they can subsequently trade with other covered companies. The cap is then linearly reduced over time so that total emissions decrease (see *Trade Perspectives*, Issue No. 5 of 10 March 2017).

The final report on the CBAM prepared by the European Parliament's *Committee on Environment, Public Health and Food Safety* (ENVI), which is the responsible Committee for this matter, was scheduled to be debated and voted on by the European Parliament's plenary during the week of 6 June 2022 and to become the European Parliament's final position for the forthcoming inter-institutional '*trilogue*' negotiations with the Council of the EU and the Commission. However, in a rather unexpected development, the European Parliament rejected the Report on the EU's ETS, which led to the postponement of the vote of the Report on CBAM. The phase-out of emission-free allowances under the EU's ETS is one of the key points linked to the CBAM. The rejection of the Report on the EU's ETS was due to a series of amendments added by Members of the European Parliament (MEPs) led by the *European People's Party*. The amendments proposed a phase-out of the ETS allowances from 2028 to 2034, which was significantly different (*i.e.*, longer) compared to the Commission's Proposal, which foresees a phase-out of the emission-free allowances from 2026 to 2032 and compared to the phase-out over the 2025 to 2030 period proposed by the ENVI Committee.

The 'nitty-gritty' of the compromise

After the rejection of the Draft Report on the ETS and the postponement of the vote on the Draft Report on CBAM, both files were sent back to the ENVI Committee in search for a compromise. Without a compromise, the legislative initiatives would not have been able to move forward and a second rejection in a plenary meeting of the European Parliament would have further delayed the adoption of the legislative initiatives, perhaps indefinitely.

In an effort to move forward the related legislative files and to avoid a second rejection in a plenary meeting, on 14 June 2022, the *European People's Party* (EPP), the *Progressive Alliance of Socialists and Democrats* (S&D), and the *Renew Europe* groups in the European Parliament agreed on a compromise text for the EU's ETS and the CBAM. In the compromise text, the MEPs agreed on a target of 63% emission reductions from industries covered by the ETS by 2030, which is slightly above the target of 61% in the Commission's Proposal. The phase-out of the free allowances for sectors covered by the EU's ETS would occur between 2027 and 2032, which would follow a "*CBAM factor trajectory*", which refers to the proportion of authorised free allowances, during the transition period in which both systems, the EU's ETS free allowances and the CBAM, would coexist. The MEPs further agreed that the "*CBAM factor trajectory*", the proportion of free allowances that would still be permissible to the sectors covered by the CBAM, would be 93% in 2027, followed by a gradual reduction to 84% in 2028, 69% in 2029, 50% in 2030, 25% in 2031, and 0% in 2032. The Commission's Proposal introduces a phase-out from 2026 to 2035 and does not foresee such "*CBAM factor trajectory*".

Additionally, the MEPs of the three groups agreed to propose the extension of the scope of the CBAM to polymers, organic chemicals, and hydrogen. Finally, the MEPs also agreed on introducing an export rebate for any "*EU production subject to carbon pricing and intended for export markets*". In this regard, the MEPs stated that the Commission would "*have to assess the WTO-compatibility of this measures and where appropriate make further proposals such as green export rebate meant for the most climate efficient EU industries*".

Potential issues of inconsistency with international trade rules

As the compromise text does not fundamentally change the approach, the previous concerns regarding the CBAM's compatibility with WTO rules (see *Trade Perspective*, Issue No. 4 of 28 February 2022) remain. At the same time, the inclusion of export rebates adds another element of potential WTO inconsistency.

The issue of the EU's ETS free allowances remains an issue of concern, as the compromise text maintains the idea that both systems, the CBAM and the ETS free allowances, would coexist in parallel over a certain period of time. The current regime of the free distribution of emission allowances under the EU's ETS, if maintained in parallel with the CBAM, could prove incompatible with the WTO Agreement on Subsidies and Countervailing Measures (hereinafter, SCM Agreement). The ETS free allowances could be considered as actionable subsidies (*i.e.*, financial contributions by a government or public body conferring a benefit to a specific group of undertakings and causing adverse effects to the interests of other WTO Members). Notably, since the phase out would be gradual, the allocation of ETS free allowances and the CBAM would, at least for some time, apply in parallel, which would amplify the subsidy concerns of the free allowances because domestic EU industries manufacturing cement, fertilisers, iron and steel, and aluminium would benefit from a regime of double protection: 1) The free allocation of emission allowances; and 2) The CBAM applying to third country products entering the EU market. Such double protection and the related advantages for EU industries appear to discriminate against '*like*' imported products.

A new and likely contentious issue concerns the proposal in the compromise text to introduce additional export rebates. According to the MEPs of the three groups, such export adjustments should be granted to products that are manufactured in the EU and exported to third countries that do not have in place equivalent carbon limitations or carbon pricing policies. On this issue, the Director for Indirect Taxation and Tax Administration of the European Commission's Directorate-General for Taxation and Customs Union, Ms. *Maria Elena Scoppio*, noted that the Commission was sceptical that such a rebate system would be compatible with WTO rules. Export rebates are only legal under WTO law when they are linked to taxes on goods (*e.g.*, value-added tax, VAT), but the rebates might be considered a trade distorting measure under the WTO SCM Agreement.

The road ahead in the Ordinary Legislative Procedure

After the rejection of the ETS Report and the postponement of the vote on the CBAM, both proposals, including the compromise text, will be re-submitted for a vote of the European Parliament's plenary on 22 June 2022. Considering that the three political groups that agreed on the compromise text form a majority in the European Parliament, this might indicate that the texts are likely to be adopted. On 28 June 2022, the Council of the EU is then expected to finalise its position on the EU ETS and the CBAM provisions. Once both institutions have agreed on their positions, inter-institutional '*trilogue*' negotiations would take place. Businesses and EU trading partners should closely follow the related developments and engage in all relevant *fora*.

The EU's increasing desire to apply its health and environmental standards to imported products and the uphill task to defend their WTO compatibility

On 3 June 2022, the European Commission (hereinafter, Commission) published a *Report from the Commission to the European Parliament and the Council Application of EU health and environmental standards to imported agricultural and agri-food products* (hereinafter, Report). On the surface, the specific aim of the Report is to assess "*the rationale and legal feasibility of applying EU health and environmental standards (including animal welfare standards as well as processes and production methods) to imported agricultural and agri-food*

products". However, the Report's greatest contribution might be in acknowledging, and grappling with, the clear tensions that exist between the EU's attempts to advance certain environmental, health, and safety measures (relating to both agricultural products and a host of other products) on the one hand, and adherence to WTO rules, on the other.

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The State-of-Play on EU health and environmental standards

The context for the Report is one in which the EU is increasingly on the lookout for avenues to advance an ambitious agenda on health and environment issues. On 19 January 2022, France's President *Emmanuel Macron* presented the priorities of France's Presidency of the Council of the EU (hereinafter, Council) to the European Parliament. With respect to trade, the main priority is ostensibly the insistence that trade partners reflect the EU's commitment to certain environmental and health standards by adopting those standards as their own.

The principal vehicles for effectuating this goal are the inclusion of '*mirror clauses'* (so named due to the fact that counterparties pledge to reflect substantially similar sanitary, phytosanitary, welfare, and environmental standards as those imposed on domestic products within the EU) and greater "*reciprocity in trade*", namely the commitment to work on measures "*to ensure that imported products are subject to the manufacturing standards in force within the EU*" (see *Trade Perspectives*, Issue No. 3 of 14 February 2022). While such tools have generally related to health and animal welfare standards, '*sustainability*' requirements are becoming increasingly prevalent. For instance, new measures relating to deforestation-free products and corporate sustainability due diligence (see *Trade Perspectives*, Issue No. 6 of 28 of March 2022) have been proposed and are currently under consideration by EU Institutions.

A request from EU Member States and the European Parliament

It is against this backdrop that the Council and the European Parliament, during the negotiations on the Reform of the Common Agricultural Policy, requested that the Commission present a report "*containing an assessment of the rationale and legal feasibility of applying EU health and environmental standards (including animal welfare standards as well as processes and production methods) to imported agricultural and agri-food products as well as identifying the concrete initiatives to ensure better consistency in their application, in conformity with WTO rules*". That request is contained in the Annex to the Council and European Parliament's political agreement on the Reform of the Common Agricultural Policy.

Interestingly, in the same Annex, reference is made to a "*unilateral statement*" by the Commission, which provides that, in addition to existing EU rules on health and "*good agricultural practice aspects",* it would also consider "*environmental concerns of a global nature in conformity with WTO rules"* when setting import tolerances. This reflects an increasing willingness on the part of the EU to consider, not only a given product's inherent characteristics when regulating importation, but also elements connected with a product's manufacturing processes and production methods (hereinafter, PPMs). This raises a host of legal questions.

Towards greater clarity on the issue?

In attempting to respond to the request of the Council and the European Parliament, the Report explains, *inter alia*, the various actions that the EU is already taking, multilaterally, bilaterally, and unilaterally, in order to bring imported agricultural products (and related PPMs) in line with EU standards. At the multilateral level, the Report notes that the EU is engaged in an ongoing effort to gain support and reach global consensus towards internationally agreed standards. At the bilateral level, the Report notes the EU's efforts to include international labour and environmental standards in Chapters on Trade and Sustainable Development in the context of bilateral relationships. Similarly, the Commission has proposed to make compliance with the *Paris Agreement* an essential element in all future trade negotiations and pursues the inclusion of a new chapter on sustainable food systems, which would dictate commitments on cooperation throughout the food supply chain, in future agreements.

With respect to its "*autonomous*" (*i.e.*, unilateral) measures, the Report highlights some of the specific environmental and animal welfare actions that are being planned by the EU, including: 1) The proposed Regulation on deforestation-free products, which would prohibit the making available on the EU market, as well as export from the EU, of certain commodities and products associated with deforestation and forest degradation, which is poised to affect at least the import of soya, cattle, palm oil, cocoa, coffee and wood; 2) The consideration of "*Environmental aspects"* in determining maximum residue levels *for pesticides that are no longer allowed in the EU*"; 3) The revision of the EU animal welfare legislation, which might prohibit certain types of animal housing, such as cages, stalls and pens, and would also apply to imported animal products; and 4) The adoption of the EU's "*flagship proposal: a horizontal sustainable food system framework law, as an umbrella for common definitions and general principles and requirements governing the sustainability of foods produced or placed on the EU market and related food operations".*

Addressing the complex issue of WTO compatibility

To its credit, the Report acknowledges that many of the EU's current proposals, both in the realm of imported agricultural and agri-food products and beyond, may be in conflict with some aspects of WTO law. As such, the Report attempts to assess the extent of the possible legal tensions. In this respect, the Report rightly notes that WTO rules safeguard each WTO Member's policy space, so that Members can adequately address their societal needs and preferences. Nevertheless, the intersections between trade liberalism and environmental protection is subject to tensions. One example of this tension is found in the realm of environmental protection or animal welfare measures aimed at addressing the environmental impact or ethical concerns that are not linked to the end product itself that "*might not even affect the physical characteristics of the final product*". Rather such measures, known as non-product related process and production methods (hereinafter, NPR-PPMs), aim at influencing the way(s) in which a product is produced.

Some of the EU's planned actions on environmental protection and animal welfare affecting imported products run the risk of WTO incompatibility, should a concerned WTO Member bring a challenge against the EU before the WTO Dispute Settlement Body. To avert or successfully manage such disputes, the Report notes that a "*first step*" would be to assess whether the measure is discriminatory in terms of Articles I and III of the GATT 1994, relating to most-favoured and national treatment, respectively, and/or whether the measure imposes a quantitative restriction on the concerned imported product(s) under Article XI of the GATT 1994. However, even if a WTO obligation were to be breached, a measure could potentially still be justified. Most obviously, a violation of a GATT 1994 obligation might be justified by one of the General Exceptions contained in Article XX thereof. For example, as noted in the Report, "*the most recurrent grounds in relation to PPM regulations concern the protection of human, animal, plant life or health (Article XX(b)), the protection of (living and non-living) exhaustible natural resources (Article XX(g)), public morals (Article XX(a)); and prison labour products (Article XX(e))*".

As relates to justifications under Article XX(a), (b), or (d) of the GATT 1994, another hurdle to justification must be cleared. In particular, the challenged measure must satisfy the '*necessity*' test, which, as the Report notes, *"requires a balancing of various elements*", relating to: 1) The "*consideration of the importance of the objectives pursued for the regulating member*"; 2) "[T]*he contribution of the measure to the objectives*"; and 3) "[T]*he absence of an alternative measure available that would be less trade restrictive, but make an equal or better contribution to achieving the stated objectives, taking into account technical and economic feasibility*". Perhaps most problematic for some of the measures, however, would be the requirement to "*meet the conditions of the 'chapeau' of Article XX, which requires that there should be no arbitrary or unjustifiable discrimination in the design, structure and application*". A good example is the EU's proposed Regulation on deforestation-free products, which foresees three categories of countries: 1) Low risk; 2) Standard risk; and 3) High risk. On the basis of the risk level, the obligations for operators and EU Member States' authorities would vary. Such

categorisation could become an important, and potentially divisive, factor (if not discriminatory, depending on its application and on the criteria used to '*label*' countries under the three categories of risk), with significant implications for businesses and traders.

According to the Report, other considerations in assessing the legality of a given measure might relate to: 1) The burden and costs imposed on the concerned stakeholders; 2) A consideration of specific conditions and differences in the production methods of trading partners; 3) Relevant international rules or standards; and 4) The scientific evidence or other information forming the basis for the measure(s). Interestingly, the Report reveals a certain confidence that measures that aim at addressing concerns with "a *global dimension and are internationally recognised by at least part of the international community (e.g., climate change, biodiversity loss, AMR) are more likely to be accepted as legitimate reasons for action*". While this is a sensible supposition, the EU would be wise not to privilege the self-assessed popularity of its measures over their legality. After all, it must be remembered that there do not exist specific exceptions for climate change or biodiversity. Similarly, there is reason to suspect that some of the exceptions in GATT Article XX are unavailable to justify extraterritorial PPMs. Before a WTO panel, it is the WTO rules that matter most.

In what might be the most explicit recognition of the tension that exists between some of the EU's plans and WTO rules, the Report asserts that a reform of certain WTO rules may be necessary in order for certain goals to be effectively pursued. In this context, the Report notes that "*the EU is committed to reforming the WTO towards a more sustainable and effective multilateral trading system*" by taking a lead in, *inter alia*, initiatives intended to mainstream climate, environmental, and other sustainability considerations in the WTO's various functions and through its "*support in international discussions on trade and environment an interpretation of relevant WTO provisions that recognise the right of members to provide effective responses to global challenges, notably climate change, biodiversity loss and environmental pollution*".

WTO disputes could be inevitable

Farmers in third countries have already stated that requirements to meet the same environmental standards as in the EU, in order to access the EU market, could become a major hurdle to trade. Given the impacts on its trading partners, it is quite likely that WTO challenges will be raised. As such, the specific design and application of the EU's measures will need to be assessed and the EU must ensure that such rules are indeed compliant with its WTO commitments. In parallel, renewed efforts should be made at all relevant negotiating tables, both multilaterally and plurilaterally/bilaterally, in order to build consensus, offer support, concessions and preferential advantages to those that commit to the same objectives and obligations of the EU, rather than focussing on a unilateral approach and on the continued access to the EU market as the sole incentive.

The EU consults on '*new genomic techniques*', while a *Genetic Technology (Precision Breeding) Bill* has been introduced in the UK Parliament

Until 22 July 2022, the European Commission (hereinafter, Commission) is holding a public consultation regarding legislation for plants and organisms obtained using certain '*new genomic techniques*'. This follows an initial feedback period in 2021, during which 70,894 responses were received. The future EU legislation seeks to "*enable innovation in the agri-food system while maintaining a high level of protection for health and the environment, and to contribute to achieving the objectives of the European Green Deal and the Farm-to-Fork Strategy*". In September 2021, the Commission published a roadmap on the initiative to establish a new regulatory framework for plants derived from targeted *mutagenesis* and *cisgenesis*. In the meantime, on 25 May 2022, the UK Government introduced a *Genetic Technology (Precision Breeding) Bill* in the lower house of the UK Parliament (House of Commons) that would introduce new rules on gene editing.

*'*New genomic techniques*', mutagenesis, cisgenesis, transgenesis – a matter of definitions*

'*New genomic techniques*' (hereinafter, NGTs) have been defined by the Commission as "*techniques that are capable of altering the genetic material of an organism and that have emerged or have been developed since 2001, when the current legislation on genetically modified organisms (GMOs) was adopted*". There is considerable interest in research on NGTs in the EU, but regulation is lagging behind scientific developments and most developments appear to take place outside the EU.

In order to modify the genetic heritage of a living organism, a number of NGTs can be used, including *transgenesis* and *mutagenesis*. *Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms* itself does not provide any general definition of these techniques. *Transgenesis* is an NGT that consists of inserting one or more genes from one species into the genome of another species. *Directive 2001/18/EC* does not explicitly refer to the notion of *transgenesis*. However, substantively, the Directive covers various techniques, which could be considered as transgenic. *Mutagenesis* does not entail the insertion of foreign DNA into a living organism. It nonetheless involves an alteration of the genome of a living species. Conventional or random methods of *mutagenesis* are applied *in vivo* (*i.e.*, within living organisms) to entire plants in order to select, from the resulting mutants, interesting deviations and to use them in breeding, without apparently creating any identifiable risks for the environment or health (see *Trade Perspectives*, Issue No. 1 of January 2022). In the process of *cisgenesis*, genetic material is inserted into a recipient organism from a donor organism with which the recipient is crossable in nature, for instance, a gene from a wild potato inserted into a domesticated potato.

The status of NGTs under EU law

In the judgment of the Court of Justice of the European Union (hereinafter, CJEU) of 25 July 2018 in Case C-528/16, the CJEU established that organisms obtained by *mutagenesis* are GMOs and are, in principle, subject to the obligations laid down by *Directive 2001/18/EC*, because the techniques and methods of *mutagenesis* alter the genetic material of a plant in a way that does not occur naturally (see *Trade Perspectives*, Issue No. 4 of 28 February 2020). On 8 November 2019, *Council Decision (EU) 2019/1904* requested the Commission to submit a study in light of the CJEU's judgment in Case C-528/16 regarding the status of NGTs under EU law, and a proposal, if appropriate in view of the outcomes of the study.

On 29 April 2021, the Commission published the requested study, noting that "*developments in biotechnology, combined with a lack of definitions (or clarity as to the meaning) of key terms, are still giving rise to ambiguity in the interpretation of some concepts, potentially leading to regulatory uncertainty*". The study states that, following the ruling of the CJEU in Case C-528/16, there had "*been reports of negative impacts on public and private research on new genomic techniques in the EU due to the current regulatory framework*". The study emphasises that "*several of the plant products obtained from NGTs have the potential to contribute to the objectives of the EU's Green Deal and in particular to the 'farm to fork' and biodiversity strategies and the United Nations' sustainable development goals (SDGs) for a more resilient and sustainable agri-food system*". Examples given in the study include plants more resistant to diseases and environmental conditions or climate change effects in general, improved agronomic or nutritional traits, and reduced use of pesticides.

The Commission's legislative initiative on 'new genomic techniques'

The Commission's legislative initiative addresses plants and organisms obtained using certain NGTs, while animals and microorganisms, and other NGTs, are outside of its scope. In these latter areas, the Commission intends to continue to build up the required scientific knowledge ahead of any further regulatory steps. The Commission indicates that there is a need for adaptation of legislation to scientific and technological progress for some NGTs and their products. The Commission considers that the following issues impact applicants, agri-food

system operators and enforcement authorities, and may also negatively affect innovation and trade: 1) Legal uncertainties in *Directive 2001/18/EC* (and other legislation based on it); 2) NGTs can be used to produce alterations of the genetic material that can also be obtained by natural mutations and conventional breeding techniques, or that can be used to produce alterations that are more complex, while current regulatory oversight and requirements are not adapted to the resulting diverse risk profiles, and in some cases can be disproportionate or inadequate; 3) The GMO legislation includes authorisation, traceability and labelling requirements that, for certain plants obtained by targeted *mutagenesis* or *cisgenesis*, raise implementation and enforcement challenges, as it will be difficult or impossible to differentiate them from plants produced through conventional breeding; and 4) The current legislative framework does not take into account whether products have the potential to contribute to societal challenges, notably sustainability. The *European Food Safety Authority* (hereinafter, EFSA) has concluded that plants produced by targeted *mutagenesis* and *cisgenesis* generally pose lower risks than plants obtained with conventional genetic modification techniques (*transgenesis*). In addition, the EFSA also concluded that, in some cases, plants produced by targeted *mutagenesis* and *cisgenesis* do not pose new hazards compared to plants produced with classical mutagenesis or conventional breeding techniques.

If the regulatory *status quo* were maintained, the Commission notes that plants obtained by targeted *mutagenesis* and *cisgenesis* would continue to be regulated under the EU's current framework for GMOs, maintaining the current risk assessment, traceability and labelling requirements, and not including a sustainability analysis. The Commission believes that "*the cultivation and market uptake of these products is expected to be limited in the EU and, in some cases, applicants might not be able to meet the traceability requirements as they stand today, while research, development and commercialisation of these products are likely to increase in most major EU trade partners that have a more enabling regulatory oversight*". The Commission considers different policy elements in the subsequent development of the policy options, including a risk assessment and approval requirements proportionate to the risk involved, as well as a sustainability analysis to examine whether, and in which way, these products contribute to sustainability. Policy instruments include more appropriate traceability and labelling provisions that are enforceable and take into account the capacity of plants obtained by targeted *mutagenesis* and *cisgenesis* to contribute to a sustainable food system and ensure the consumers' right to make informed choices. After the public consultation on NGTs, a proposal for an EU regulation is planned for the second quarter of 2023.

The UK Genetic Technology (Precision Breeding) Bill

On 25 May 2022, the *Genetic Technology (Precision Breeding) Bill* (hereinafter, Bill) was introduced in the UK's House of Commons. In presenting the Bill, the UK Government said that leaving the EU provides the UK with the opportunity to adopt a "*more science based and proportionate approach to the regulation*" of precision bred organisms, which could "*drive innovation and investment*" in the UK. According to the May 2022 Queen's Speech, the Bill intends to "*encourage agricultural and scientific innovation*" in the UK, which would "*unlock the potential of new technologies to promote sustainable and efficient farming and food production*".

The Bill applies to "*precision bred*" plants and vertebrate animals (excluding humans), which means that they are gene edited, and would remove them from the regulatory system for GMOs. Under the Bill, the concept of '*precision bred organism*' "*means a precision bred plant or a precision bred animal*". An organism is precision bred "*if (a) any feature of its genome results from the application of modern biotechnology, (b) every feature of its genome that results from the application of modern biotechnology is stable, and (c) every feature of its genome could have resulted from (i) traditional processes, whether or not in conjunction with selection techniques, or (ii) natural transformation*". The UK Government describes precision breeding as a "*range of breeding technologies, such as gene editing, that enable DNA to be edited "much more efficiently and precisely than current breeding techniques*".

The UK Government said that the primary policy objective of the Bill is to ensure that plants, animals and food and feed products developed using precision breeding technologies be "*regulated proportionately to risk*". The Bill would "*introduce simpler regulatory measures to enable these products to be authorised and brought to market more easily*". In that regard, the Bill foresees notification requirements in relation to the release of precision bred organisms, a precision breeding register, precision bred animal marketing authorisations, rules on risk assessment, the regulation of food and feed produced from precision bred organisms (including requirements for the purpose of securing traceability), and a register of food and feed marketing authorisations.

The EU and the UK do not appear to be far apart

Besides the fact that it also covers animals, the UK's *Genetic Technology (Precision Breeding) Bill* does not appear to be far apart from the Commission's initiative on plants and organisms obtained using certain '*new genomic techniques*'. A proportionate risk assessment, as well as traceability and sustainability considerations, are common elements of both initiatives. Labelling is not directly addressed in the Bill, which foresees, however, implementing Regulations ensuring that "*the way in which any such food or feed will be placed on the market will not mislead consumers*". The Bill's second reading was scheduled in the House of Commons on 15 June 2022.

Interested stakeholders are advised to participate in the public consultation in the EU on NGTs and to carefully monitor developments in the UK, seeking, where necessary, adequate legal advice to take action and ensure that their legitimate interests are properly voiced and represented within all relevant *fora*.

Recently adopted EU legislation

Trade Remedies

- *Commission Implementing Regulation (EU) 2022/926 of 15 June 2022 imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*

- *Commission Implementing Regulation (EU) 2022/927 of 15 June 2022 imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council*

Customs Law

- *Commission Implementing Regulation (EU) 2022/933 of 13 June 2022 concerning the classification of certain goods in the Combined Nomenclature*

- *Commission Implementing Regulation (EU) 2022/934 of 16 June 2022 making imports of certain aluminium road wheels originating in Morocco subject to registration*

Food Law

- *Commission Delegated Regulation (EU) 2022/931 of 23 March 2022 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by laying down rules for the performance of official controls as regards contaminants in food (Text with EEA relevance)*

- *Commission Implementing Regulation (EU) 2022/932 of 9 June 2022 on uniform practical arrangements for the performance of official controls as regards contaminants in food, on specific additional content of multi-annual national control plans and specific additional arrangements for their preparation (Text with EEA relevance)*

- *Commission Implementing Regulation (EU) 2022/928 of 15 June 2022 amending Annexes V and XIV to Implementing Regulation (EU) 2021/404 as regards the entries for Canada, 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 (Text with EEA relevance)*

- *Corrigendum to Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003 (Official Journal of the European Union L 170 of 25 June 2019)*

- *Commission Implementing Regulation (EU) 2022/939 of 13 June 2022 entering a name in the register of protected designations of origin and protected geographical indications ('Giresun Tombul Fındığı' (PDO))*

- *Commission Implementing Regulation (EU) 2022/940 of 13 June 2022 entering a name in the register of protected designations of origin and protected geographical indications ('Maranho da Sertã' (PGI))*

- *Commission Implementing Regulation (EU) 2022/942 of 13 June 2022 approving non-minor amendments to the product specification for a name entered in the register of protected designations of origin and protected geographical indications ['Arroz del Delta del Ebro/Arròs del Delta de l'Ebre' (PDO)]*

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