

- **The European Parliament welcomes the European Commission’s new approach on trade and sustainable development and calls for swift implementation**
- **Indonesia plans to prohibit the export of tin, bauxite, and copper: another ‘*protectionist*’ policy following the export prohibition for nickel ore?**
- **In the aftermath of major food recalls, the European Commission revises the regulation governing the presence of ethylene oxide in food additives**
- **Recently adopted EU legislation**

The European Parliament welcomes the European Commission’s new approach on trade and sustainable development and calls for swift implementation

On 6 October 2022, the European Parliament adopted *European Parliament Resolution of 6 October 2022 on the outcome of the Commission’s review of the 15-point action plan on trade and sustainable development*, its reaction to the European Commission’s *Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on The power of trade partnerships: together for green and just economic growth*, published on 22 June 2022, which sets out the European Commission’s revised approach to trade and sustainable development (hereinafter, TSD) Chapters in the EU’s preferential trade agreements (hereinafter, PTAs). While, overall, the European Parliament welcomes the European Commission’s new approach, the Resolution points out areas where the European Parliament considers that further action would be needed, such as regarding the role of the *Domestic Advisory Groups* and the swift inclusion of the new approach in PTAs already in force.

The EU’s new approach on trade and sustainable development

On 22 June 2022, the European Commission (hereinafter, Commission) presented its new approach on the TSD Chapters of its PTAs, which identifies “a set of policy priorities and key action points” to further enhance the effectiveness of the current engagement-based approach. The new approach on TSD Chapters focuses on three main aspects: 1) “*Results-oriented and priority-based engagement with partner countries*”; 2) “*More participation and support for Civil Society*”; and 3) “*Stronger focus on implementation and enforcement*” (see *Trade Perspectives*, Issue No. 13 of 4 July 2022).

More specifically, the new approach provides three main changes to the enforcement mechanism related to TSD provisions: 1) Extending the general State-to-State dispute settlement compliance stage to the TSD Chapter, which means that a party found in violation of its TSD commitments would have to inform the other party of how it intends to comply with a panel report and to carry out such plan over a certain period of time; 2) Involving the *Domestic Advisory Groups* (i.e., groups created under the PTAs and composed of independent

economic, social and environmental stakeholders, including employers' and workers' organisations, as well as environmental groups, to monitor and express their opinions on the implementation of a given TSD Chapter) in monitoring the compliance stage following disputes, which means that civil society and *Domestic Advisory Groups* would be allowed to submit observations to the review panel; and 3) Extending the possibility to apply trade sanctions in cases of a failure to comply with obligations that materially defeat the object and purpose of the *Paris Agreement on Climate Change*, or in cases of serious instances of non-compliance with the International Labour Organization's (hereinafter, ILO) fundamental principles and rights at work. The Commission Communication states that such sanctions would be "*temporary and proportionate and may take the form of suspension of trade concessions*".

The European Parliament's Resolution

On 6 October 2022, the European Parliament adopted its Resolution on the new approach related to the TSD Chapters of the EU's PTAs. Overall, the European Parliament welcomes the new approach and emphasises that the "*EU's free trade agreements must contribute to a carbon-neutral economy by prioritizing trade in goods and services provided through sustainable practices while respecting human rights*". In the Resolution, Members of the European Parliament (hereinafter, MEPs) welcome the Commission's intention "*to reinforce TSD chapters as cooperative instruments and to make use of early gap analysis to identify country-based implementation priorities with the involvement of civil society*". The Commission's Communication notes the importance of the identification of country-specific implementation priorities and considers that "*such country-based implementation priorities requires an early gap analysis*". In this regard, MEPs welcomed the fact that the ILO, the UN Environmental Programme, and the Multilateral Environmental Agreements would be consulted when determining such gaps.

In the Resolution, the European Parliament further points out certain issues where it considers that clarification or stronger commitments were needed. The European Parliament calls on the Commission and on EU Member States to make the best use of the "*Team Europe approach to ensure coordination and coherence when engaging with partner countries on trade-related sustainability concerns*". The Commission's new approach on TSD Chapters provides a more structured role for the *Domestic Advisory Groups* (DAGs) foreseen in the EU's PTA. While the European Parliament welcomes this enhanced role, it calls on the Commission "*for functioning DAGs also to be set up in partner countries and regions*". Additionally, the European Parliament requests the Commission to ensure that civil society organisations, in addition to the *Domestic Advisory Groups*, be able to submit collective complaints regarding TSD matters.

The European Parliament welcomes the possibility to apply sanctions in cases of a Party's failure to comply with obligations that materially defeat the object and purpose of the *Paris Agreement on Climate Change*, or in cases of serious instances of non-compliance with the ILO's fundamental principles and rights at work.

Notably, the European Parliament's Resolution underlines that the Commission intends to pursue the implementation of the new TSD approach, including the possibility of sanctions, to be introduced only in future and ongoing trade negotiations. In its Resolution, the European Parliament states that it "*expects the principles of the outcome of the review of the TSD 15-point action plan to be reflected in all EU trade agreements under negotiation and future trade agreements submitted to Parliament for consent*", but, importantly, that it also expects "*the modernisation of all FTAs in force, using the dedicated review clauses included in existing agreements or other appropriate procedures*". Finally, the European Parliament calls on the Commission to ensure that all future EU's PTAs include a chapter on sustainable food systems that would be linked to the TSD Chapter.

While the Resolution is not legally binding, it represents the specific position of the European Parliament, which must give its consent to agreements negotiated by the Commission. Thus, the European Commission is well advised to take the Parliament's position into account, to avoid risking a delay in any future ratification process for a new or updated PTA.

The delicate balance of linking trade with trade-related issues and concerns

Trade and sustainable development provisions in PTAs are always a sensitive issue. The inclusion of sanctions, which includes the possibility to withdraw preferential tariffs, might affect the negotiating positions of trading partners. The withdrawal of tariff preferences to motivate compliance or to penalise non-compliance with sustainability commitments can be considered an economic sanction. The issue is delicate, as it connects trade with non-trade, but trade-related, issues and concerns. The connection between trade (*i.e.*, economic and commercial commitments or concessions) and sustainability (*i.e.*, environmental, social, human and/or labour rights and commitments) is clear.

The trade-offs within PTAs are and must be, first and foremost, economic in nature. Any equation that does not recognise this simple premise, will likely not work or either discourage the conclusion of PTAs or trigger rejection from some of the EU's trading partners, especially developing countries. Trading partners within a preferential trading arrangement, which 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, provided of course that they comply with the sustainability obligations that they have committed to.

Therefore, the EU's new approach must ensure that a balance between sustainability commitments and their enforcement and economic benefits be struck. Tying sustainability commitments with specific trade concessions should work to the benefit of both parties to a PTA and, ultimately, to the overriding sustainability objectives being pursued.

The EU's new approach has already been included in the recently concluded EU-New Zealand Free Trade Agreement (see *Trade Perspectives*, Issue No. 15 of 1 August 2022). The new elements introduced in the EU-New Zealand FTA will likely be under discussion during the negotiations of other trade agreements, such as those under negotiation with Australia, Indonesia, and India. However, it is important to note that all elements presented in the Commission's Communication on the new TSD approach, as holds true for all aspects put forth during a negotiation process, are subject to the negotiations and any negotiated outcome must take into account the particular needs and characteristics of the trading partner in question.

All interested stakeholders should closely monitor the developments regarding the implementation of the EU's new approach on the TSD Chapters of its PTAs, as the new rules will be introduced in new and most likely also in existing trade agreements and become the new model for TSD chapters in PTAs negotiated by the EU. The European Parliament's Resolution politically reinforces this approach and is an important signal to the EU's trading partners that such commitments are needed for the European Parliament to accept the outcome of PTA negotiations.

Indonesia plans to prohibit the export of tin, bauxite, and copper: another 'protectionist' policy following the export prohibition for nickel ore?

On 7 September 2022, Indonesia's President *Joko Widodo 'Jokowi'* announced that Indonesia intended to gradually enact new export prohibitions on tin, bauxite, and copper starting in 2023, in an effort to carry on with the policy of supporting the downstream industry in the mining sector. This move follows Indonesia's rather '*protectionist*' approach regarding trade in raw minerals, in particular with respect to exports of nickel ore and the alleged success in promoting Indonesia's downstream nickel industry and increasing the industry's profit. This article discusses Indonesia's broader regime for trade in raw minerals, in particular the efforts to encourage the construction of domestic refining facilities (smelters) and revisits the export prohibition on nickel ore, in light of the new plan to prohibit the export of other minerals. The export prohibition of nickel ore has also led to grave concerns from trading partners. Notably,

the EU claims that the export prohibition and the related domestic processing requirements would illegally restrict the EU's access to raw materials needed for stainless steel production and filed a dispute settlement complaint with the World Trade Organization (hereinafter, WTO).

Indonesia's restrictions on the export and processing of minerals

One of Indonesia's long-standing industrial policy objectives is to develop domestic processing facilities and domestic capacities to increase the added value of raw materials, including for minerals. Indonesia's 'downstream' policy is part of the Government's ambition to transform the commodity-driven economy into an industrial one. Indonesia's Minister of Industry *Agus Gumiwang* noted that such policy is expected to create more job opportunities and increase the country's export capabilities and the ability to compete in the international market.

Indonesia's efforts to transform its downstream industries started in 2009 through the introduction of *Law No. 4 of 2009 on Mining of Minerals and Coal (hereinafter, Mining Law), as amended by Law No. 3 of 2020*, which provides that "the management of minerals and coal must be controlled by the government to give real added value to the national economy". Article 5 of the *Mining Law* provides the basis for the Government to introduce policies that give priority to domestic interests, allowing the Government to "control its production and exports". To further support the development of industrial downstream industries, Article 170A of the *Mining Law* introduced export restrictions, providing that mining companies may only export minerals if they have met the prescribed requirements, namely the development of refining or processing facilities, including by cooperating with local smelters. Article 170A also calls for the development of domestic processing and refining activities, requiring companies to increase the added value of their commodities by processing and/or refining the raw material prior to the export. The Government of Indonesia considers that the export prohibition and domestic processing requirements should be supported by the availability of domestic minerals processing or refining facilities (smelters), which has led to the introduction of various incentives for investors to build smelters, including the creation of industrial zones.

The plan for new export prohibitions

Given these Government policies, it does not come as a surprise that Indonesia recently announced the plan to gradually prohibit the export of additional minerals, starting with tin and bauxite in 2023, followed by copper in 2024. The additional export prohibitions are deemed necessary by the Government of Indonesia to ensure that all minerals can be processed domestically, which would increase the export value of such mineral products vis-à-vis the export value of raw minerals. Indonesia's Ministry of Energy and Mineral Sources is currently conducting a study on the export prohibitions, particularly with respect to tin, calling for input from stakeholders and coordinating with other ministries. The Government of Indonesia is currently preparing the relevant regulations, which look poised to be announced in November 2022.

The current export restrictions on nickel ore

The forthcoming export prohibitions on bauxite, tin, and copper follow on Indonesia's existing export prohibition for nickel ore, which, coupled with the requirements to process and/or refine minerals domestically, has led to the establishment of additional smelters. The availability of nickel has been increasingly important for the manufacturing of stainless steel and is a key component in lithium-ion batteries needed for electric vehicles. Therefore, the Government of Indonesia considers nickel to be an important commodity to attract downstream investments.

In 2014, in view of supporting the export of processed nickel products, the Government of Indonesia introduced an export prohibition on nickel ore. The export prohibition was relaxed in 2017, when the Government of Indonesia allowed temporary exports of certain minerals, including nickel ore with a nickel concentration below 1.7% until 11 January 2022. The relaxation was made in view of the decrease in nickel production and the slow pace of domestic smelter construction. On the basis of *Minister of Energy and Mineral Resources Regulation*

No. 11 of 2019, the Government of Indonesia reinstated the export prohibition of nickel ore as of 1 January 2020. The Government of Indonesia claims that the export prohibition has been successful in increasing mining investments and exports of nickel-derivative products. Indonesia's President *Jokowi* stated that the export value of nickel-derived commodities from January to August 2022 amounted to USD 12.35 billion, an increase of 263% compared to 2019.

In 2021, Indonesia was the world's largest producer of nickel, with a production of approximately 1 million metric tonnes. Indonesia's Ministry of Energy and Mineral Resources notes that Indonesia's production of nickel-processed products (e.g., stainless steel) reached approximately 2.47 million metric tonnes in 2021, an increase of 2.17% compared to 2020, when it amounted to 2.41 million metric tonnes. With vast nickel reserves, Indonesia aims at developing its electric vehicles industry and becoming one of the biggest electric vehicles hubs in Asia and beyond, targeting an annual production of 600,000 electric cars and 2.5 million electric motorcycles by 2030, as stated by Indonesia's Ministry of Industry in 2021.

Reactions from businesses and trading partners

The announcement of the additional export prohibitions regarding bauxite, tin, and copper has led to diverse reactions from the industry. The *Indonesian Tin Exporters Association* noted that the industry needed more time for adjustments, in particular regarding processing activities. In addition, the *Indonesian Bauxite and Iron Ore Entrepreneurs Association* noted that the Government must ensure that the industry is ready for the export prohibition to avoid negative consequences, such as an increase in unemployment.

Previously, the Government of Indonesia's decision to move forward the export prohibition by several years had led to complaints by various nickel mining companies. In 2019, the *Indonesian Nickel Miners Association* stated that the move would reduce investments in the mining industry and would lead to economic losses due to an inadequate number of domestic smelters. In 2020, the *Indonesian Nickel Miners Association* unsuccessfully requested the Government of Indonesia to allow exports of nickel ore, due to low domestic demand needs.

The export prohibition of nickel ore has also led to concerns from trading partners, particularly the EU, claiming that the prohibition and the related domestic processing requirements would illegally restrict the EU's access to raw materials needed for stainless steel production. The former Director for Asia and the Pacific at Germany's Federal Foreign Office stated in 2019 that Germany was "*not happy*" with Indonesia's decision to fast-track the prohibition, including its impact on the German industry. At the same time, Chinese companies expanded their investment in raw material processing with business partners in Indonesia. Currently, most Indonesian smelters are built in cooperation with Chinese companies, many of which are also interested in investing in the development of electric vehicles batteries.

The ongoing WTO trade dispute

On 14 September 2021, the EU filed a request for the establishment of a WTO dispute settlement panel (*DS592*), challenging the consistency of Indonesia's export prohibition on nickel ore and the domestic processing requirements under Article XI:1 of the General Agreement on Tariffs and Trade (GATT) 1994. When announcing the EU's request, the European Commission stated that Indonesia was set to become the second largest producer of stainless steel in the world after China, but "*fuelled by unfair and illegal advantages*". Other WTO Members, such as India, the US, China, and Brazil joined the dispute as third parties. On 1 November 2021, the chairperson of the Panel informed the WTO Dispute Settlement Body that it would issue its final report in the last quarter of 2022. In September 2022, Indonesia's President *Jokowi* noted that Indonesia would "*likely lose at the WTO*" against the EU, but reaffirmed that this would not be a source of concern as the downstream industry "*would have already been built*". The Special Staff of Indonesia's Minister of Energy and Mineral Resources for the Acceleration of Mineral and Coal Governance *Irwandy Arif* confirmed that Indonesia was ready to file an appeal if it lost the case.

Indonesia's export restrictions and the multilateral trading system

Indonesia's export prohibition on nickel ore, as well as the forthcoming prohibitions on exports of other minerals, appear to constitute export restrictions prohibited under Article XI:1 of the GATT 1994, which forbids WTO Members to impose measures that restrict the export or import of goods other than through measures in the form of duties, taxes, or other charges. By mandating mining companies to domestically process and refine minerals to a certain level prior to export, Indonesia has *de facto* blocked the export to all other WTO Members, which could distort prices on the world market and affect trade. China, one of the leading producers of raw materials, had also imposed years ago export restrictions on certain minerals, which were found to be inconsistent with Article XI:1 of the GATT 1994 (see dispute [DS431](#)). Indonesia might invoke the general exceptions under Article XX of the GATT 1994 to justify its measures on the basis of legitimate policy objectives, but the rather protectionist objectives of attracting investments in downstream industries, creating job opportunities, and adding value to domestic raw materials, would likely not be considered '*legitimate*' objectives by a WTO Panel.

Towards future disputes?

Officials within the Government of Indonesia have constantly reiterated that, as a sovereign country, Indonesia has the right to implement domestic policies restricting exports, without addressing the measures' impact on trade, nor the measures' consistency with WTO rules. However, such understanding appears incompatible with the rules-based multilateral trading system mandating WTO Members to eliminate and refrain from introducing protectionist or trade restrictive measures. Indonesia appears confident that domestic industries can be developed in the early years of implementation of such measures and before they are found to be inconsistent with Indonesia's WTO obligations and before Indonesia may be called upon to bring its policies in line with WTO rules. With the forthcoming export prohibitions on bauxite, tin, and copper, Indonesia should expect further trade disputes to be launched under the WTO dispute settlement system by its WTO trading partners.

The short-term policy gain that may be illegally achieved by these measures would inevitably conflict with the longer-term damage brought to Indonesia's WTO credibility, rule of law and attractiveness for investors. Surely, the recipe to achieve such legitimate developmental goals, especially for a country like Indonesia blessed with significant resources in terms of minerals and raw materials, could have been based instead on WTO compatible policies and on dedicated measures to attract investment and forge international partnerships.

In the aftermath of major food recalls, the European Commission revises the regulation governing the presence of ethylene oxide in food additives

On 11 August 2022, the European Commission (hereinafter, Commission) adopted [Regulation \(EU\) 2022/1396 amending the Annex to Regulation \(EU\) No 231/2012 laying down specifications for food additives listed in Annexes II and III to Regulation \(EC\) No 1333/2008 of the European Parliament and of the Council as regards the presence of ethylene oxide in food additives](#). The revision of the rules concerning the presence of ethylene oxide in food additives comes after the reportedly biggest food recall in EU history, in which, since 2020, about 3,000 products have been recalled due to the presence of ethylene oxide in food. The article reviews the regulation of ethylene oxide for food additives, discusses the recall incidents, and comments on the impacts on products entering the EU market.

The multiple uses of the chemical substance ethylene oxide

Ethylene oxide is an important chemical substance having multiple uses, including its use as a sterilising agent (for instance, for medical equipment and cosmetics) and as a raw material

in the manufacture of various products, such as antifreeze, textiles, plastics, detergents, and adhesives. However, with respect to food additives, such as hexamethylene tetramine (E 239) or Polyoxyethylene Stearate (E 431), [Commission Regulation \(EU\) No 231/2012 laying down specifications for food additives listed in Annexes II and III to Regulation \(EC\) No 1333/2008 of the European Parliament and of the Council](#) provides that ethylene oxide may not be used for sterilising purposes. Ethylene oxide is a substance of concern classified as carcinogenic, mutagenic, and toxic for reproduction in accordance with [Regulation \(EC\) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures](#). According to the Food Safety Authority of Ireland, “the consumption of foods containing ethylene oxide does not pose an acute risk to health, but there is an increased health risk if foods contaminated with ethylene oxide are consumed over a long period of time”.

Ethylene oxide is neither approved in the EU as a biocidal product under [Regulation \(EU\) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products](#), nor as an active substance for use in plant protection products in accordance with [Regulation \(EC\) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market](#). Ethylene oxide is used in a number of third countries to combat fungi and bacteria, in particular to reduce or eliminate microbiological contamination with Salmonella.

[Commission Regulation \(EU\) No 231/2012](#) sets no quantified limit for the presence of ethylene oxide regarding all food additives. In accordance with that Regulation, a limit of not more than 0,2 mg/kg of ethylene oxide was set only for those food additives, in the production of which ethylene oxide is used. No specific limit was set for ethylene oxide that entered food additives through the raw materials. The 0,2 mg/kg limit was first established in 2003, based on the [opinion](#) of the EU’s [Scientific Committee on Food](#) (i.e., the predecessor of the European Food Safety Authority, EFSA) of 6 May 2002, which concluded that, while “*estimated current intakes from the few food additives containing it [ethylene oxide], conforming to present specifications, are very low*” and that, since “*ethylene oxide is both genotoxic and carcinogenic, intakes from food sources should be as low as possible*”.

Recent RASFF notifications concerning the presence of ethylene oxide

In the EU, detections of ethylene oxide in sesame seeds from India started to increase in September 2020. It appears that ethylene oxide fumigation, used to stop the growth of salmonella bacteria during the storage of sesame seeds in India, has been common practice for years. The recitals to [Regulation \(EU\) 2022/1396](#) note that, recently, there had “*been several RASFF (Rapid Alert System for Food and Feed) notifications concerning findings of ethylene oxide in a number of foodstuffs, and in particular in a number of food additives*” like locust bean gum (E410) or guar gum (E 412) used for the manufacture of a variety of foodstuffs (see [Trade Perspectives, Issue No. 15 of 30 July 2021](#)). On 15 December 2021, on the basis of those notifications and information regarding official controls performed by EU Member States, the Commission adopted [Implementing Regulation \(EU\) 2021/2246 amending Implementing Regulation \(EU\) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries](#), which established measures in relation to the possible risk of contamination with ethylene oxide. Namely, for consignments of locust beans (carob), mucilages (i.e., a thick, gluey substance produced by nearly all plants) and thickeners, derived from locust beans or locust bean seeds from Morocco, spice paste from Mexico and peppers of the genus *Capsicum* (other than sweet) from Uganda, a frequency of identity and physical checks set at 10% was adopted. The increased level of EU official controls of consignments of sesame seed from India for the possible contamination with ethylene oxide remains at the previously established 50%.

In addition to these increased controls, on 30 May 2022, [Commission Implementing Regulation \(EU\) 2022/913 amending Implementing Regulation \(EU\) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain](#)

[goods from certain third countries](#) established that the potential health risk from contamination by ethylene oxide affects mixtures of food additives containing locust bean gum or guar (*i.e.*, a legume) gum. Therefore, a frequency of identity and physical checks has been set at 20% for consignments of “*mixtures of food additives containing locust bean gum or guar gum*” entering the EU from India, and of “*mixtures of food additives containing locust bean gum*” from Malaysia and Turkey.

Difficulties of enforcing EU law as regards food additives

Regulation (EU) 2022/1396 notes that, “*as regards food additives, the enforcement of Union law may raise difficulties, because it is difficult to establish whether the presence of ethylene oxide results from its use in the sterilisation of the food additives in breach of Regulation (EU) No 231/2012 or from any other reason*”.

In order to avoid those difficulties and to ensure a high level of protection of human health, *Regulation (EU) 2022/1396* provides that the presence of ethylene oxide, irrespective of its origin, be it from the sterilisation of the food additive or from any other reason, such as from the use of plant protection products, is not authorised for all food additives. For this purpose, a maximum limit for residues of ethylene oxide specific for food additives has been set at the limit of quantification (*i.e.*, 0,1 mg/kg) in those products, “*that is, at the validated lowest residue concentration, which can be currently quantified and reported by routine monitoring with validated control methods*”.

In order to ensure consistency with [Regulation \(EC\) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin](#), in particular with the limits it sets out for the raw materials used for the production of food additives, the residues of ethylene oxide are defined in the same terms as in that Regulation.

When the draft *Commission Regulation (EU) amending the Annex to Regulation (EU) No 231/2012 as regards the presence of ethylene oxide in food additives* was discussed in the EU’s Standing Committee on Plants, Animals, Food and Feed, Section Novel Food and Toxicological Safety of the Food Chain on 24 March 2022, the Commission [stated](#) that “*this maximum limit might be re-examined in the future, taking into account technological progress which might result in achieving lower limits of quantification by routine methods of analysis by well-equipped laboratories across the European Union*”.

Recalls of products contaminated with ethylene oxide expected

The revision by *Regulation (EU) 2022/1396* was made in order to provide clarity on the allowed levels of ethylene oxide present in all food additives. Prior to the revision, there was uncertainty surrounding the applicable maximum permitted levels of ethylene oxide. Through the revision, the Commission determined that the inclusion of ethylene oxide, regardless of its origin, be it from the sterilisation of the food additive or from any other reason, such as from the use of plant protection products, is not permitted in food additives. A maximum limit for ethylene oxide residues in food additives has been set at the limit of quantification (0,1 mg/kg, *i.e.*, the lowest residue concentration that can currently be quantified and reported by routine monitoring with validated control methods).

Regulation (EU) 2022/1396 governing the presence of ethylene oxide in food additives came into effect in September 2022. Gums like acacia gum (E414), locust bean gum (E410), or guar gum (E412) are food additives used in the food industry for their thickening, stabilising, and emulsifying functionalities. However, the production of many gums requires conditions that are not available in Europe. Food business operators that have placed products on the EU market incorporating, for example, locust bean gum (E410) or guar gum (E 412) contaminated with ethylene oxide above the limit of quantification of 0.1 mg/kg, must withdraw the affected products from the market and recall them from consumers. The Food Safety Authority of Ireland [notes](#) that “*implicated batches that are withdrawn from the market or recalled from*

consumers should not be reintroduced to the food chain in any form, including as animal feed. Documented verification of the disposal, destruction or return to supplier of the affected batch(es) and product(s) should be retained”.

The ongoing recalls and product withdrawals of raw materials and food additives containing ethylene oxide is a challenge for both food business operators and competent authorities. *Regulation (EU) 2022/1396* governing the presence of ethylene oxide in food additives provides clarity that the presence of ethylene oxide, irrespective of its origin, be it from the sterilisation of the food additive or from any other reason, such as from the use of plant protection products, is not authorised for all food additives. Businesses must carefully check their supplies of raw materials and food additives for the presence of ethylene oxide in order to avoid costly product withdrawals or administrative measures.

Recently adopted EU legislation

Trade Law

- *Council Decision (EU) 2022/1952 of 13 October 2022 on the position to be taken on behalf of the Union within the Special Committee on Geographical Indications and Trade in Wines and Spirits established by the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part, as regards the adoption of the rules of procedure of the Special Committee*
- *Commission Implementing Decision (EU) 2022/1945 of 21 February 2020 on documents to be issued by Member States pursuant to Article 18(1) and (4) and Article 26 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (notified under document C(2020) 1114)*
- *Council Decision (EU) 2022/1932 of 29 September 2022 on the position to be taken on behalf of the European Union within the EU-CTC Joint Committee established by the Convention of 20 May 1987 on common transit procedure as regards amendments to that Convention*

Customs Law

- *Commission Implementing Decision (EU) 2022/1933 of 12 October 2022 amending Council Directive 2008/90/EC as regards the extension of the derogation relating to import conditions for fruit plant propagating material and fruit plants intended for fruit production from third countries (notified under document C(2022) 7148)*

Food Law

- *Commission Implementing Regulation (EU) 2022/1950 of 14 October 2022 renewing the approval of creosote as an active substance for use in biocidal products of product-type 8 in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council (Text with EEA relevance)*
- *Commission Implementing Regulation (EU) 2022/1942 of 13 October 2022 amending Implementing Regulation (EU) 2018/2019 as regards certain plants for planting of *Jasminum polyanthum* Franchet originating in Uganda, amending Implementing Regulation (EU) 2020/1213 as regards the phytosanitary measures for the introduction of those plants for planting into the Union territory and correcting Implementing*

*Regulation (EU) 2020/1213 as regards the phytosanitary measures for the introduction of certain plants for planting of *Jasminum polyanthum* Franchet originating in Israel, into the Union territory*

Ignacio Carreño, Joanna Christy, Tobias Dolle, Michelle Limenta, Alya Mahira, Lourdes Medina Perez, Paolo R. Vergano and Lisa Wijayani contributed to this issue.

Follow us on twitter @FratiniVergano

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

FRATINIVERGANO 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:

FRATINIVERGANO – 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/>