

## Season's Greetings

2022 has been a difficult year all over the world and our thoughts go to all those that have suffered personal or professional losses due to the current war in Ukraine. All of us in the International Trade and Food Law practice of *FratiniVergano* would like to wish our readers, as well as their colleagues and families, all the best for a peaceful holiday season and for a healthy and prosperous 2023.

We hope that you have enjoyed *Trade Perspectives*® in 2022 and that you have always found it stimulating and timely. We have once again published a total of 23 issues and invested considerable time and energy in this undertaking. We have done it with our usual passion and drive, eager to play a small but constant role in protecting the multilateral trading system and the rule of law from the temptations of unilateralism and protectionism.

In the new year, we will continue with our editorial efforts, beginning with the publication of the next issue of *Trade Perspectives*® on 16 January 2023. *Trade Perspectives*® is circulated to thousands of recipients worldwide. This fills us with pride, but also with a deep sense of commitment and discipline towards our readers' expectations.

Thank you for your interest in *Trade Perspectives*® and for helping us to make it a better and more useful tool of discussion. We look forward to hearing from you regularly and to another year of international trade and food law developments. You can follow us on *Twitter* @FratiniVergano and find all previous issues of *Trade Perspectives*® on our website at <http://www.fratinivergano.eu/en/trade-perspectives>.

-  **WTO Panel rules against Indonesia's export prohibition and domestic processing requirement for nickel ore**
-  **Investing in a green and 'just' energy transition? Indonesia secures USD 20 billion in investment through the *Just Energy Transition Partnership***
-  **The European Commission proposes to take action to fully exploit the algae sector in Europe**
-  **Recently adopted EU legislation**

## **WTO Panel rules against Indonesia's export prohibition and domestic processing requirement for nickel ore**

On 30 November 2022, the WTO circulated the [Panel Report](#) in the WTO dispute DS592 *Indonesia – Measures Relating to Raw Materials*, filed by the EU in 2019 against Indonesia's export restrictions on raw materials, notably nickel ore. The WTO Panel ruled in favour of the EU's claims that Indonesia's export prohibition and domestic processing requirement for nickel ore are inconsistent with WTO rules. The Panel also rejected Indonesia's defences raised under Article XI:2(a) of the *General Agreement on Tariffs and Trade (GATT) 1994*, concerning measures temporarily applied to prevent or relieve critical shortages of essential products, and

under Article XX(d) of the *GATT 1994*, concerning measures necessary to ensure compliance with laws or regulations that are not inconsistent with the provisions of the GATT. Following the WTO's ruling, Indonesia's President *Joko Widodo* reportedly confirmed that Indonesia had filed an appeal, and that, pending a final decision in the appeal proceeding, the Government of Indonesia had no intention to remove the export prohibition and domestic processing requirement, claiming that it constitutes "*the country's right to manage its natural resources*".

### ***Indonesia's measures and the EU's WTO challenge***

Indonesia accounts for approximately one quarter of the overall global nickel reserves and is expected to dominate nickel ore production until 2040. Since 2014, the Government of Indonesia has restricted the export of nickel ore to different extents and under different regulations, as part of its long-standing industrial policy objectives of developing domestic processing facilities and capacities to increase the added value of raw materials, particularly minerals. Exports of nickel ore were prohibited in 2014, but, in 2017, the Government of Indonesia partially relaxed the rules by temporarily allowing the exports of low-grade nickel ore with a nickel concentration below 1.7%. As of 1 January 2022, the Government of Indonesia effectively reinstated the total export prohibition applicable to nickel ore, irrespective of the nickel concentration. In parallel to the export prohibition, Indonesia applies a '*domestic processing requirement*', whereby holders of mining licenses are required to increase the added value of their commodities by processing and/or refining certain raw materials domestically, including nickel ore, (see *Trade Perspectives, Issue No. 19 of 17 October 2022*). Raw materials that have not undergone such processing may not be exported.

The EU claimed that Indonesia's restrictions "*unfairly limit access of EU producers to raw materials for steel production, notably nickel*". On 14 September 2021, following consultations that had failed to resolve the dispute, the EU submitted a panel request to the WTO Dispute Settlement Body, challenging the consistency of Indonesia's export prohibition of nickel ore and the domestic processing requirement with Article XI:1 of the *GATT 1994* on export prohibitions and restrictions.

### ***The findings of the WTO Panel***

Article XI:1 of the *GATT 1994* prohibits WTO Members from maintaining or imposing prohibitions or restrictions other than duties, taxes or other charges, "*whether made effective through quotas, export licences or other measures, on the exportation or sale for export of any product destined for the territory of any other Member*". The Panel found that Indonesia's export prohibition and domestic processing requirement are inconsistent with Article XI:1 of the *GATT 1994*, as the measures constitute a prohibition or restriction on the exportation or sale for export of products from Indonesia made effective through "*quotas, import or export licences or other measures*".

First, regarding the export prohibition, the issue of violation was straightforward. The Panel found that the EU had demonstrated, and that Indonesia had admitted that it has been prohibiting the export of nickel ore in various forms since 2014, currently implemented through two regulations issued by Indonesia's Minister of Energy and Mineral Resources. Second, regarding the domestic processing requirement, Indonesia argued that the measure was an internal requirement regulating the sale and processing of nickel ore, which falls outside the scope of Article XI:1 of the *GATT 1994*, and that the measure was entirely inoperative with respect to exports, as the "*exportation of nickel ore, regardless of concentration, is legally prohibited in the first place*". According to the Panel, while the domestic processing requirement does not explicitly prohibit the export of nickel ore, "*it creates a situation whereby only refined nickel products will be available for export*" and such a measure indeed limits the exports of nickel ore.

### ***Nickel ore as an essential input under Article XI:2(a) of the GATT 1994?***

Indonesia invoked Article XI:2(a) of the *GATT 1994*, an exemption allowing WTO Members to temporarily apply prohibitions or restrictions to prevent or relieve critical shortages of foodstuffs or other products essential to the WTO Member imposing the measure(s). Indonesia argued that nickel is essential for Indonesia for three main reasons: 1) The nickel mining sector significantly contributes to Government revenue and employment; 2) Nickel ore is an indispensable input for the steel industry; and 3) Indonesia has a strategic plan to expand electric vehicle battery production with nickel ore as a critical input. Indonesia noted that the Panel in the WTO Dispute DS394 *China – Raw Materials* recognised bauxite as essential for China, an input for making steel, and the relevant importance of such sector to China's economy.

The Panel emphasised that an industrial input product can be considered as '*absolutely indispensable or necessary*' if it is "*needed to maintain an industry through a passing need, but not to protect it from the vagaries of competition or ordinary market conditions [...], or to create an industry that did not yet exist*". While the Panel acknowledged the importance of the nickel mining sector for Indonesia, the Panel concluded that Indonesia's measures are not designed to address a '*critical shortage*' of nickel ore, but rather to ensure the '*availability*' of nickel ore as an input product for Indonesia's downstream industries. The Panel ruled that nickel ore is not essential for Indonesia for the following reasons: 1) At the time of the Panel's establishment, the electric vehicle battery production had not yet commenced in Indonesia; 2) Stainless-steel production only represents a minor part of Indonesia's economy; and 3) Indonesia did not present evidence on how stainless steel and electric vehicle batteries are important products to other manufacturing industries in the country. The Panel highlighted that this situation was very different compared to the situation in the case *China – Raw Materials*, as bauxite was already used in the production of iron, steel, and other important products relevant to China's domestic and export markets.

### ***Indonesia's justification under Article XX(d) of the GATT 1994***

Indonesia also invoked one of the general exceptions under Article XX of the *GATT 1994*, namely Article XX(d), which justifies *GATT 1994*-inconsistent measures that are necessary to secure compliance with laws or regulations that are not inconsistent with the *GATT 1994*. The Panel agreed with Indonesia that the export prohibition and domestic processing requirement are '*designed*' to ensure compliance with Article 96 of *Law No. 4 of 2019 on Coal and Mining*, which requires holders of mining permits to "*manage and monitor the mining environment, including reclamation and post-mining*". This provision, which is part of Indonesia's comprehensive framework on sustainable mining and mineral resource management, is considered to be a law or regulation that is consistent with WTO rules.

However, in assessing whether the measures are necessary to ensure compliance, the Panel agreed with the EU that its proposed alternative measure, namely an export authorisation system whereby "*exports of nickel ore would be permitted upon production by the exporter of a document attesting that the nickel ore has been mined in compliance with all the environmental requirements*", would have been a less trade restrictive measure, but one that would make the same contribution as the challenged measures. After weighing and balancing the contribution of Indonesia's measures with the objectives of Article 96(c) of *Law No. 4 of 2019 on Coal and Mining* and the trade restrictiveness of the measures, the Panel concluded that the measures are not '*necessary*', and, therefore, could not be justified under Article XX(d) of the *GATT 1994*.

### ***Appeal into the 'void' or arbitration?***

On 3 December 2022, Indonesia's Minister of Trade *Zulkifli Hasan* confirmed Indonesia's decision to appeal the Panel Report. In accordance with Article 16.4 of the *WTO Dispute Settlement Understanding* (DSU), once appealed, panel reports cannot be adopted until after the completion of the appeal. Considering that the WTO's Appellate Body has not been

operable since 11 December 2019, due to the US blocking the appointment of new Appellate Body Members, Indonesia's appeal will go '*into the void*'.

As an effort to preserve the two-tiered WTO adjudication system, on 30 April 2020, certain WTO Members, including the EU, set up the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) in accordance with Article 25 of the DSU on '*Arbitration*'. The MPIA is a temporary arrangement that its Parties can use to arbitrate the appeals in WTO disputes among themselves amid the paralysis of the Appellate Body. MPIA arbitral awards must be notified to the WTO's Dispute Settlement Body without the need of formal adoption. The Parties to the MPIA agreed to abide by the arbitral awards, which would be final and binding. However, Indonesia is not yet a party to the MPIA and there has been no indication from the Government of Indonesia regarding any intention to join it.

In the alternative, Indonesia and the EU could resort to Article 25 of the DSU for *ad-hoc* appeal arbitration, if so agreed by the disputing parties. Earlier this year, in the WTO dispute DS583 *Turkey – Pharmaceutical Products*, the EU and Turkey had notified the WTO Dispute Settlement Body of their agreement on the procedures for Article 25 arbitration to "*decide any appeal from any final report*". Appeal arbitration proceedings were indeed initiated, and, on 25 July 2022, the appeal arbitration award was issued, representing the first appeal case settled by arbitration after the beginning of the WTO Appellate Body's paralysis. While Turkey is not a party to the MPIA, the appeal was possible as Turkey and the EU had previously agreed on the appeal arbitration procedures, which are very similar to those under the MPIA, although with a bit of adjustment to reflect the conditions of the respective dispute. Such *ad-hoc* arbitration mechanism could be employed by Indonesia in appealing the WTO Panel's rulings and recommendations, contingent upon the EU's approval. However, given that Indonesia intends to maintain the measures found inconsistent with WTO rules by the Panel, pending a final decision in the appeal proceeding, Indonesia may have no interest in a swift appellate decision.

### ***Implications for the multilateral trading system and businesses***

The WTO Panel's rulings and recommendations in the nickel ore dispute clearly emphasise that protectionist policies by WTO Members are not allowed, and indeed, cannot hold up to WTO scrutiny. Although WTO Members are free to pursue legitimate policy objectives, the underlying measures must be consistent with WTO rules. Indonesia's reluctance to abide by the WTO Panel ruling, evidenced by the statements made by President *Joko Widodo* and other Government officials, is worrying and further jeopardises the notion of the rules-based multilateral trading system. Thus, no change for the benefit of foreign businesses is expected to be made by the Government of Indonesia in the near future regarding the rules for nickel ore. Businesses should also anticipate Indonesia's stated plan to gradually prohibit the exportation of tin, bauxite, and copper from 2023 onwards (see *Trade Perspectives, Issue No. 19 of 17 October 2022*).

### **Investing in a green and '*just*' energy transition? Indonesia secures USD 20 billion in investment through the *Just Energy Transition Partnership***

On 15 November 2022, at the *Partnership for Global Infrastructure and Investment* event at the G20 Summit in Bali, Indonesia, the President of Indonesia *Joko Widodo*, the President of the European Commission *Ursula von der Leyen* on behalf of the EU, and leaders of the *International Partners Group*, which consists of Canada, Denmark, France, Germany, Italy, Japan, Norway, the United Kingdom, and the US (hereinafter, *International Partners Group*) launched the *Just Energy Transition Partnership* (hereinafter, *JETP*) under the G7's *Partnership for Global Infrastructure and Investment* (hereinafter, *PGII*) programme.

The commitments of the *JETP* are provided in a Joint Statement, detailing the political commitments undertaken by the Government of Indonesia and the members of the *International Partners Group*. Through the *JETP*, the countries agreed to a USD 20 billion



financial package to help Indonesia speed up its transition from fossil fuels to renewable energy. Reportedly, the funding will be allocated to develop renewable energy, such as solar and geothermal, while phasing out fossil fuels, including the closure of coal-fired power plants, which currently account for the majority of Indonesia's energy mix. Indonesia's President *Joko Widodo* highlighted that the partnership would “*generate valuable lessons for the global community and can be replicated in other countries to help meet our shared climate goals through concrete collaborative actions*”.

### ***Indonesia's commitment to accelerating the transition towards renewable energy***

As stated in Indonesia's Nationally Determined Contribution (NDC), submitted to the United Nations Framework Convention on Climate Change (UNFCCC) on 23 September 2022, the country committed to decrease its greenhouse gas (hereinafter, GHG) emissions by 31.89% with its own efforts, and by 43.20% with international support, by 2030. The main issue that impedes Indonesia's transition towards renewable energy is its dependency on coal, which still powers approximately 70% of the country's energy needs.

To achieve its NDC target and ensure a successful energy transition, the Government of Indonesia has issued a number of regulatory instruments, namely: 1) *Presidential Regulation No. 98 of 2021 on the Implementation of Carbon Economic Value for Achieving Nationally Determined Contribution Targets and Control of Greenhouse Gas Emissions in National Development*, which aims at reducing GHG emissions by introducing a mechanism of carbon trading and taxes on carbon emissions (see *Trade Perspectives*, [Issue No. 16 of 5 September 2022](#)); 2) *Presidential Regulation No. 112 of 2022 concerning the Acceleration of Renewable Energy Development for Electricity Supply*, which aims at phasing out coal-fired power plants by introducing the prohibition of the construction of new coal-fired power plants (see *Trade Perspectives*, [Issue No. 20 of 31 October 2022](#)); and 3) the *New Energy and Renewable Energy Bill* (hereinafter, NRE Bill), which is currently still under deliberation process within Indonesia's the House of Representatives. The *NRE Bill* aims at supporting the development of new and renewable energy projects in Indonesia by providing fiscal and non-fiscal incentives (see *Trade Perspectives*, [Issue No. 13 of 4 July 2022](#)).

### ***The Just Energy Transition Partnership***

On 26 June 2021, the group of G7 leaders, an intergovernmental political *forum* consisting of Canada, France, Germany, Italy, Japan, the US, and the United Kingdom, with the addition of the EU as a non-enumerated member, announced the launch of the *Partnership for Global Infrastructure and Investment* (PGII) at the 47<sup>th</sup> G7 Summit. The PGII is a collaborative effort by G7 countries to fund infrastructure projects in developing countries, which aims at delivering “*quality, sustainable infrastructure that makes a difference in people's lives around the world*”. Over the next five years, G7 countries will invest a total of USD 600 billion through the PGII program. According to the press release from Japan's Ministry of Foreign Affairs, the *JETP* is a partnership under the PGII in which “*donor countries work together to accelerate the early retirement of high-emission infrastructure in partner countries and provide supports for investment in renewable energy and related infrastructure*”.

Indonesia is the second country to be granted investment for the green energy transition through a *JETP* and was granted a USD 20 billion investment by the leaders of the *International Partners Group*. Previously, South Africa has been granted USD 8.5 billion under a *JETP* at the United Nations Climate Change Conference COP26 in November 2021.

The *JETP* with Indonesia provides for an action plan detailing the political commitments of the Government of Indonesia and the members of the *International Partners Group*. The USD 20 billion investment is composed of USD 10 billion given by the members of the *International Partners Group* and a USD 10 billion investment from the *Glasgow Financial Alliance for Net Zero*, an alliance that includes financial institutions such as *Bank of America*, *Citi*, *Deutsche Bank*, *HSBC*, *Macquarie*, *MUFG Bank*, and *Standard Chartered*. In the Joint Statement, Indonesia and the members of the *International Partners Group* underlined the urgency of

*“decarbonizing energy systems by expediting a reduction in power sector emissions, increasing energy efficiency, and hastening renewable energy deployment, while strengthening efforts to reach universal, affordable, and reliable access to energy”.*

### ***The investment plan, financing, and technical assistance***

As provided in the Annex to the *Joint Statement*, Indonesia and the *International Partners Group* intend to work together over the next six months to establish a comprehensive investment plan for the power sector. The *Joint Statement* notes that the investment would be directed to, *inter alia*: 1) Accelerate the deployment of renewable energy in order for renewable energy to comprise at least 34% of Indonesia’s power generation by 2030; 2) Support the early retirement of coal-fired power plants; 3) Invest in educating on technological capacity and knowledge; and 4) Restrict the development of coal-fired power plants in accordance with the *PR 112/2022* and collaborate to find potential zero-emission and renewable solutions for power generation facilities outside of Java and Bali islands. To manage the investment, the Government of Indonesia has appointed *PT Sarana Multi Infrastruktur*, a State-Owned Enterprise under Indonesia’s Ministry of Finance, which specialises in infrastructure financing.

### ***Significance of the JETP for Indonesia’s green energy transition***

While the investment plan is still in the process of being formulated, the *JETP* is designed to support Indonesia’s green energy transition. The partnership is intended to significantly accelerate Indonesia’s energy transition by reducing Indonesia’s GHG emissions by more than 290 million metric tonnes by 2030, which is faster than Indonesia’s initial goal to reduce emissions by such amount by 2037. The acceleration of the GHG emission reduction would derive from the early closure of coal-fired power plants and the development of renewable energy sources. The acceleration is expected to help Indonesia reach its goal of net-zero emissions in the power sector by 2050.

Furthermore, the *JETP* will focus not only on GHG emission reductions, but also on the promotion of sustainable development and economic growth, while upholding a ‘*just*’ energy transition, which will protect the livelihoods of people and workers in the affected sectors.

### ***A ‘just’ energy transition***

As stated in the *JETP Joint Statement*, Indonesia and the *International Partners Group* reaffirm the importance of a ‘*just*’ energy transition by pursuing the ‘*greening*’ of the economy in a way that is as fair and inclusive to everyone as possible. In this context, Indonesia and the *International Partners Group* recognise the importance of a ‘*just*’ energy transition that should bring “*opportunities for industrial innovation to create quality green jobs, and considers all communities and societal groups affected directly or indirectly by an expedited reduction of power sector emissions*”.

A ‘*just*’ energy transition is important as the transition towards green energy, by phasing out coal-fired power plants, will have a widespread impact not only on the coal sector, but also on industries that are still heavily reliant on coal, such as fertilisers, cement, ceramics, and textiles. Therefore, in order to ensure a ‘*just*’ energy transition, the *JETP* is to be carried out in a transparent, participatory, and accountable manner, which can only be achieved by involving affected communities and societal groups. Therefore, the Government of Indonesia should develop a roadmap for the implementation of the *JETP* by involving private sectors or labour organisations. Indonesia could also use the investment for human capital development to support the reskilling and upskilling of local workers, by involving labour organisations and businesses so that the energy transition does not heavily impact local workers in dismissed sectors.

## ***The need for a strong supporting legal framework***

In addition to having a comprehensive investment plan for the implementation of the *JETP*, the Government of Indonesia should develop a stronger policy framework that supports its green transition efforts, including strict policies to phase out coal-fired power plants. According to the Regional Climate and Energy Campaign Coordinator at *Greenpeace Southeast Asia*, *Tata Mustasya*, the Government of Indonesia must “*follow up on JETP’s commitment by immediately formulating a policy that guarantees that the energy transition process is carried out fairly*”.

Currently, Indonesia still lacks a legal framework that strictly prohibits the construction and operation of coal-fired power plants. Indonesia recently issued *PR 112/2022* on 13 September 2022, which aims at phasing out the use and construction of coal-fired power plants (see *Trade Perspectives*, [Issue No. 20 of 31 October 2022](#)). While *PR 112/2022* mandates the prohibition of the construction of new coal-fired power plants, the regulation also provides certain exemptions to build coal-fired power plants, which led to criticism, as *PR 112/2022* shows that the Government of Indonesia is not yet “*fully committed*” to retire coal as an energy source. To further support the development of renewable energy through the *JETP*, Indonesia should accelerate the development and enactment of the *NRE Bill* to link the *JETP* investment plan to Indonesia’s renewable energy development. The *NRE Bill* will constitute an umbrella framework that should facilitate the development of new and renewable energy projects in Indonesia. Therefore, to effectively implement the *JETP* and to succeed in a ‘*just*’ energy transition, Indonesia should start now in developing a strict legal framework that provides a strict timeline for coal retirement, while also ensuring a ‘*just*’ energy transition.

## **The European Commission proposes to take action to fully exploit the algae sector in Europe**

On 15 November 2022, the European Commission (hereinafter, Commission) proposed to take action to fully exploit the potential of algae in Europe, and published the [Communication from the Commission: Towards a strong and sustainable EU algae sector](#) (hereinafter, the Communication). The *European Green Deal*, the EU’s *Farm to Fork Strategy*, and the EU’s [Sustainable Blue Economy Communication](#) already identified the potential of farmed seafood, including algae, as a source of protein for food and feed with a low-carbon footprint. The EU’s *Farm to Fork Strategy* highlights the role of algae as an important source of alternative protein for a sustainable food system and global food security. The actions under the Commission’s Communication aim at providing healthier diets, at lowering the EU’s CO<sub>2</sub> emissions, and at addressing water pollution. This article reviews the Commission’s Communication, the different actions it proposes, and the implications for the algae industry in the EU and in third countries.

### ***Developing algae production in the EU***

The European standard [EN 17399:2020 on algae and algae products](#) defines algae as a functional group of organisms consisting of microalgae, macroalgae, cyanobacteria, and labyrinthulomycetes. Algae range in size from single-celled organisms (microalgae and cyanobacteria) to giant multicellular forms such as seaweed (macroalgae).

On 2 December 2019, the Commission published the [Roadmap for the Blue Bioeconomy](#). The Commission defines ‘*Bioeconomy*’ as “*the production of renewable biological resources and the conversion of these resources and waste streams into value added products, such as food, feed, bio-based products and bioenergy*”. The *Roadmap* concluded that the development of algae cultivation had been hindered by factors such as high production costs, low-scale production, limited knowledge of the markets, consumers’ needs, environmental impacts of algae cultivation, and a fragmented governance framework. Following the *Roadmap*, the Commission initiated and supported several algae-related initiatives, which are currently in an implementation or planning phase (2021-2023). For example, in February 2022, the

Commission created the [EU4Algae](#), an European Algae Stakeholder *forum* that serves as a network for collaboration among European algae stakeholders and a single information point on algae funding calls, projects, business-related information, intelligence and best practices.

In the [Farm to Fork Strategy](#), the Commission noted that it would “*examine EU rules to reduce the dependency on critical feed materials (e.g. soya grown on deforested land) by fostering EU-grown plant proteins as well as alternative feed materials such as insects, marine feed stocks (e.g. algae) and by-products from the bio-economy (e.g. fish waste)*”. The Commission also stated that “*farmed fish and seafood generate a lower carbon footprint than animal production on land*” and that it would “*also set out well-targeted support for the algae industry, as algae should become an important source of alternative protein for a sustainable food system and global food security*”.

Low in fat and rich in dietary fibres, micronutrients and bioactive compounds, algae are often presented as a healthy and low-calorie food, with some species known for having a particularly high protein content.

### ***Towards a strong and sustainable EU algae sector***

According to the Commission’s Communication, a growing global population, environmental pressures, climate change and the depletion of resources, worsened by the war in Ukraine, which has limited the availability of fertilisers, animal feed ingredients and energy, all require a different approach to be taken. The Commission’s initiative aims at addressing these matters by “*making wider use of the vast and too little used resource that is the seas and the oceans, currently the source of only up to 2% of human food, despite covering over 70% of the Earth’s surface*”. The Commission hopes that stronger EU algae farming and processing sectors could respond to demand in a wide range of industries, starting with food, animal feed or bio-based plastic to cosmetics, pharmaceuticals, or biofuels. The farming of macroalgae (*i.e.*, seaweed) can also help regenerate the ocean and seas by removing nutrients that cause eutrophication (*i.e.*, the process by which an entire body of water, or parts of it, becomes progressively enriched with minerals and nutrients, particularly nitrogen and phosphorus, which may result in oxygen depletion of the water body with negative consequences for the living organisms in the water). The farming of macroalgae has a low carbon and environmental footprint and a promising potential for carbon sequestration. Microalgae production can also be done on land and far from the sea. Algae are a source of carbon compounds and have applications in wastewater treatment and atmospheric CO<sub>2</sub> mitigation.

The Communication details 23 proposed actions, building on existing initiatives, the best available science, knowledge and data, and the best business practices, including to: 1) Develop standards for algae ingredients, contaminants, and algae biofuel, together with the European Committee for Standardisation *CEN*; 2) Conducting studies and discussions on seaweed climate change mitigation opportunities and the role of seaweed as blue carbon sinks; and 3) Subject to the European Food Safety Authority’s advice, start discussions on the establishment of maximum levels of contaminants and iodine in algae and/or the adoption of a new monitoring Recommendation for algae species for which insufficient occurrence data for contaminants are available, in order to allow the establishment of maximum levels.

Other actions aim at improving business environments, increasing social awareness and acceptance of algae and algae-based products by consumers, and closing the knowledge, research, and technology gaps. They include: facilitating access to marine space; identifying optimal sites for seaweed farming; including seaweed farming and sea multi-use in maritime spatial plans; assessing the market potential, efficiency and safety of algae-based materials when used in fertilisers; funding pilot projects for career reorientation and supporting innovative SMEs and projects in the algae sector; and supporting, through *Horizon Europe* and other EU research programmes, the development of new and improved algae processing systems, novel production methods and algae cultivation systems.



## Improving the governance framework and legislation

The Commission notes that, “currently, certain EU legislation applies to seaweed cultivation at sea or algae cultivation on land, e.g. legislation on food safety or fertilising products. However, there is considerable fragmentation in areas where there is no EU-level regulatory framework and different national regulations, depending on an EU Member State sector’s specific circumstances, are in place, (e.g. on licensing, access to marine space, species to be farmed)”. The Commission, therefore, considers that the EU algae sector needs coherent and streamlined governance throughout the EU, including simplified procedures and a monitoring and quality framework, with the “ultimate aim of placing on the market sustainably sourced and safe biomass algae-based products”. For example, starting in 2023, the Commission will assess the market potential, efficiency and safety of algae-based materials when used in fertilising products and the need to amend [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](#) to include algae-based materials.

With respect to foods, certain algae species may fall under the EU’s Novel Foods framework (see, for more detail, [Trade Perspectives, Issue No. 23 of 13 December 2019](#)). In addition, there are further issues that companies intending to market algae in the EU should be aware of, such as the issue of heavy metals and contaminants in seaweed, the issue of seaweed and nutrition, and the discussion on nutrition and health claims in the marketing of seaweeds and seaweed products, including food supplements (see [Trade Perspectives, Issue No. 12 of 14 June 2019](#)).

### **Implications for the algae industry in the EU and in third countries**

Although there are many possible applications that algae can offer, the industry in Europe is still very much at a developing stage, mainly focused on the harvesting of seaweed from the wild rather than cultivation in aquaculture as for example in Asia. It appears that a stronger European algae sector would indeed support the objectives of the *European Green Deal* and the *Farm to Fork strategy*, as there is a need to transition to more sustainable food systems and a more circular economy.

The Commission estimates that European demand for seaweed could increase from around 270,000 metric tonnes in 2019 to 8 million metric tonnes in 2030 and reach EUR 9 billion in value in 2030 across all sectors, with feed, food and fertilisers being the largest. Such an increase in production could create around 85,000 jobs, remove thousands of tonnes of phosphorus and nitrogen from the European Seas annually, mitigate up to 5.4 million metric tonnes of CO<sub>2</sub> emissions a year and relieve pressure on the land. The Commission’s plans could also reduce the EU’s reliance on imports of seaweed. According to the Commission, in terms of value (EUR 554 million in 2016), the EU is one of the biggest importers of seaweed products globally and the demand is expected to rise. Already in its *2020 Blue Bioeconomy Report*, the Commission recognised the potential of cultivated seafood to meet rising demand for protein, while alleviating pressure on fisheries. The same report also recognised that a lack of research funding in this area remained one of the biggest obstacles to its success in Europe.

On 15 November 2022, when the initiative to fully exploit the potential of algae in Europe was launched, the European Commissioner for Environment, Oceans and Fisheries *Virginijus Sinkevičius* stated that “stronger EU algae farming and processing sectors can respond to demand in a wide range of industries, starting with food, animal feed or bio-based plastic to cosmetics, pharmaceuticals or biofuels. Algae biomass can serve as an alternative to raw materials that now are usually fossil-fuel-based, which is very much in line with the European Green Deal’s decarbonisation ambition. With this initiative we approach the EU algae sector in such a holistic way as never before”.

## **Outlook and next steps**

The Commission announced that it would discuss the Communication with the European Parliament and the Council. In order to put the 23 actions into practice, the Commission intends to coordinate with the EU Member States, industry (e.g., via the *EU4Algae forum*), and other relevant stakeholders. The Commission declared that it would prepare a report assessing progress in implementing the Communication by the end of 2027.

## **Recently adopted EU legislation**

### **Trade Law**

- *Decision No 1/2022 of the Trade Committee of 16 November 2022 modifying Appendix 1 to Annex XIII to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Ecuador and Peru, of the other part [2022/2392]*
- *Decision No 2/2022 of the Trade Committee of 16 November 2022 modifying Appendix 1 to Annex XIII to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Ecuador and Peru, of the other part [2022/2393]*
- *Decision No 3/2022 of the Trade Committee of 16 November 2022 modifying Appendix 1 to Annex XIII to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Ecuador and Peru, of the other part [2022/2394]*
- *Council Decision (EU) 2022/2384 of 25 November 2022 on the approval, on behalf of the European Union, of the modification of the Union's Schedule of Specific Commitments under the General Agreement on Trade in Services (GATS) to incorporate Annex 1 to the Declaration on the Conclusion of Negotiations on Services Domestic Regulation*

### **Trade Remedies**

- *Commission Implementing Regulation (EU) 2022/2390 of 7 December 2022 amending the definitive countervailing duty imposed on imports of certain rainbow trout originating in Türkiye by Implementing Regulation (EU) 2021/823 following a partial interim review pursuant to Article 19 of Regulation (EU) 2016/1037 of the European Parliament and of the Council*

### **Food Law**

- *Commission Regulation (EU) 2022/2388 of 7 December 2022 amending Regulation (EC) No 1881/2006 as regards maximum levels of perfluoroalkyl substances in certain foodstuffs*
- *Commission Implementing Regulation (EU) 2022/2389 of 7 December 2022 establishing rules for the uniform application of frequency rates for identity checks and physical checks on consignments of plants, plant products and other objects entering the Union*

- *Council Decision (EU) 2022/2391 of 25 November 2022 on the position to be taken on behalf of the European Union within the Council of Members of the International Olive Council, as regards the trade standard applying to olive oils and olive-pomace oils*
- *Corrigendum to Commission Delegated Regulation (EU) 2022/2292 of 6 September 2022 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of food-producing animals and certain goods intended for human consumption ( OJ L 304, 24.11.2022 )*

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