

- **The EU and Chile modernise their Association Agreement: A renewed alliance**
- **The EU signed Partnership and Cooperation Agreements with Malaysia and Thailand: A step closer towards preferential trade agreements?**
- **Causing consumer confusion? Is there a need to review the EU rules on food date labelling?**
- **Recently adopted EU legislation**

The EU and Chile modernise their Association Agreement: A renewed alliance

On 9 December 2022, the EU and Chile concluded negotiations for the *EU-Chile Advanced Framework Agreement*. Negotiations for the Agreement had technically already been concluded in 2021, but, due to a change of Government in Chile, which took office in March 2022, the official conclusion of the Agreement was delayed. On 15 December 2022, the European Commission (hereinafter, Commission) published the *Trade and Investment Pillar* of the Advanced Framework Agreement, which includes a number of novelties. The *Advanced Framework Agreement* modernises the current EU-Chile Association Agreement and reflects the need for common rules regarding the challenges posed by global shared challenges, such as digitalisation, climate change, market diversification, and the revitalisation of multilateralism.

Modernising the EU-Chile Association Agreement

In 2002, the EU and Chile concluded an Association Agreement, which includes a comprehensive Preferential Trade Agreement (PTA) that entered into force in 2003. The PTA was one of the first modern comprehensive PTAs concluded by the EU. However, after 20 years, the current Agreement was in need of an update to address the new global challenges, given that it lacked rules on digital trade, provisions regarding the use of a new generation of green energy and raw materials for technological innovations, as well a chapter on trade and sustainable development. The modernised Agreement will also improve the rules on public procurement and market access, particularly for agricultural products and fisheries.

In November 2017, the Council of the EU adopted the negotiating directives to modernise the trade pillar of the EU-Chile Association Agreement (see *Trade Perspectives*, [Issue No. 3 of 9 February 2018](#)) with the objective to broaden the scope and to adjust to the new “*political and economic global challenges, to the new reality of the EU-Chile partnership, and to the level of ambition of recently concluded agreements and negotiations being conducted by the EU and Chile*”. The first round of negotiations was held in the same month.

The negotiations took four years and ten rounds of negotiations, with the final round having taken place from 19 April to 7 May 2021. Negotiations for the Agreement had technically been concluded in 2021 under the Chile’s previous Government, but the new Government that took office in March 2022 requested certain revisions in line with its new priorities, notably with respect to sustainable growth and the objective to reduce Chile’s reliance on exports of

minerals and raw materials. On 9 December 2022, the EU and Chile then officially concluded negotiations on the Advanced Framework Agreement. European Commission Executive Vice-President and European Commissioner for Trade *Valdis Dombrovskis* stated that the Agreement would create “*new opportunities to support economic growth on both sides, underpinned by much stronger protection of the environment and climate, labour rights, gender equality and food systems*”, while Chile’s Minister of Foreign Affairs *Antonia Urrejola Noguera* stated that the trade and investment section of the Agreement would incorporate “*important provisions, such as robust Trade and Sustainable Development, a Gender and Trade specific chapter, and a Small and Medium Enterprises chapter aimed at aiding SMEs in their internationalization*”.

The approach under the EU-Chile Advanced Framework Agreement

Given their broad scope, Association Agreements are normally agreements of shared competences between the EU and EU Member States. Therefore, they must be ratified not only by the EU, but also the relevant parliaments of individual EU Member States. Given the recent delays in ratification processes, instead of a single comprehensive Association Agreement, the EU-Chile *Advanced Framework Agreement* is composed of two parallel legal instruments: 1) The *Advanced Framework Agreement*, which includes a Political and Cooperation Pillar and a Trade and Investment Pillar (including investment protection provisions) and which will be subject to ratification by the EU, Chile, as well as by all EU Member States; and 2) An *Interim Free Trade Agreement* (hereinafter, iFTA), which will cover only those parts of the Trade and Investment Pillar of the EU-Chile *Advanced Framework Agreement* that are of exclusive EU competence. The iFTA only needs to be ratified by the EU, namely by the European Parliament and the Council of the EU, and by Chile, and will expire once the full EU-Chile Advanced Framework Agreement eventually enters into force. This approach intends to ensure that the important trade commitments rapidly enter into force and a similar architecture is being discussed for the EU-Mexico Global Agreement and could be proposed for the EU-Mercosur Association Agreement.

Overall, the business sector welcomed the conclusion of the *Advanced Framework Agreement* and called upon the EU to ensure swift ratification. The *European Automobile Manufacturers’ Association* particularly welcomed the conclusion of the Agreement stating that such Agreement was of particular significance to the automobile sector, as it would enhance access to key raw materials that are much needed for electric mobility.

Enhanced market access

According to the Commission, under the *Advanced Framework Agreement*, “*99,9% of EU exports will be tariff free, which is expected to increase EU exports to Chile by up to 4.5 billion euros*”. The EU will maintain zero tariffs for industrial goods and provide better market access for agricultural products. With respect to agri-food products, the modernised EU-Chile trade agreement will include an additional 196 tariff lines in Chile’s tariffs schedules, mostly covering agricultural products, which will grant fully liberalised market access for goods originating in the EU. For instance, the modernised Agreement will remove remaining tariffs for certain agri-food products at entry into force, such as cereals and some vegetable oils that are currently subject to duties of 6%. Trade in other agri-food products will be fully liberalised over a period of three, five, or seven years, such as trade in certain cheeses and fishery products. Duties for some agri-food products, such as processed cereals (duties vary depending on the product), sugar confectionery (duties of a maximum of 18.7%), chocolate (duties of a maximum of 18.7%), and sweet biscuits (duties of a maximum of 24.2%), will be liberalised over a period of three years from the day the agreement enters into force. Additionally, the EU will provide increased tariff-rate quotas (hereinafter, TRQs) for various products. For example, the TRQ for Chilean beef will increase from 3,000 metric tonnes to 4,800 metric tonnes at zero duty from entry into force, while new TRQs at zero duty will be established, such as a TRQ of 9,600 metric tonnes for sheep meat, a TRQ of 19,800 metric tonnes for pig meat, and a TRQ of 38,320 metric tonnes for poultry meat.

With respect to the Chapter on Public Procurement, Chile agreed to apply the chapter not only to the federal level, but also to approximately 345 municipalities in Chile that will open their bidding markets to EU goods and services providers. Importantly, Chile is not a party to the World Trade Organization's plurilateral Agreement on Government Procurement.

New chapters in line with recent trends and developments

According to the Commission, the modernised EU-Chile trade agreement contains a strong commitment on human rights, sustainability and innovation, a new Chapter on Sustainable Food Systems, and a chapter on Digital Trade, which, according to the Commission, will introduce rules to ensure *"an open, secure and trustworthy online environment for businesses and consumers, along with high standards of personal data protection"*. The Agreement is also the first EU trade agreement to contain a Chapter on Trade and Gender Equality, under which the EU and Chile recognise *"the importance of incorporating a gender perspective into the promotion of inclusive economic growth, and the key role that gender-responsive policies can play in this regard"* and defining the pursuit of the elimination of barriers for women's participation in the economy and international trade.

The new Chapter on Sustainable Food Systems was proposed by the EU for the first time during the EU-Chile trade negotiations, though, given a more rapid conclusion of negotiations, the EU-New Zealand Free Trade Agreement became the first agreement to include such chapter. The chapter provides for the parties' commitment to cooperate on sustainable food systems, including a concrete commitment to *"phase out the use of antibiotics as growth promoters"*, and cooperation commitments on animal welfare.

With respect to the Chapter on Trade and Sustainable Development, the Commission had adopted a new approach in 2022 (see *Trade Perspectives, Issue No. 7 of 11 April 2022*), which was already reflected in the EU-New Zealand Free Trade Agreement (see *Trade Perspectives, Issue No. 15 of 1 August 2022*). While the Chapter on Trade and Sustainable Development of the EU-Chile trade agreement was negotiated before the EU's new approach was adopted by the Commission, the EU and Chile agreed to include a side letter in which both parties commit to pursue the new EU approach. More specifically, the *Joint Statement on Trade and Sustainable Development by the European Union and Chile* states that the parties would, *"upon the entry into force of the interim Free Trade Agreement, initiate a formal review process of its trade and sustainable development aspects in accordance with Article XX [on the review of the Chapter] in order to consider the incorporation, as appropriate, of additional provisions that may be deemed relevant by either Party"* and that *"such additional provisions may relate, in particular, to further enhancing the enforcement mechanism of the TSD chapter, including the possibility to apply a compliance phase, and relevant countermeasures as last resort"*.

Another novel chapter is the Chapter on Raw Materials, which follows the EU's objective to secure access to such relevant raw materials. Given that Chile's soil is rich in certain much needed raw materials and rare earths, necessary, *inter alia*, to produce goods such as batteries, the EU pursued the inclusion of this Chapter. The Chapter on Raw Materials introduces transparency requirements for mining exploration licenses, as well as cooperation mechanisms to discuss issues related to energy and raw materials, and to develop common technical standards. Additionally, the Chapter contains commitments by the parties to undertake environmental impact assessments of mining projects. The Chapter introduces a specific provision on export pricing, stating that a party must not *"impose a higher price for of energy goods or raw materials to the other Party than the price charged for such good when destined for the domestic market"*, while providing an exemption providing that *"Chile may introduce or maintain measures with the objective to foster value addition, by supplying industrial sectors at preferential prices of raw materials so they can emerge within Chile provided that such measures satisfy the conditions set out"*. This new chapter will likely set a precedent for other trade agreements negotiated by the EU, such as with Australia and Indonesia.

The next steps

The Commission has published the text of the agreement, as well as its annexes and tariff schedules. The EU-Chile Advanced Framework Agreement will now enter into the '*legal scrubbing*' phase (*i.e.*, legal review of the agreement), which will be followed by the ratification procedure. Interested stakeholders and businesses should carefully review the new commitments, familiarise themselves with the new rules and opportunities, and seek legal advice as necessary.

The EU signed Partnership and Cooperation Agreements with Malaysia and Thailand: A step closer towards preferential trade agreements?

On 14 December 2022, at the side-lines of the EU-ASEAN Commemorative Summit held in Brussels, the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission *Josep Borrell* and the Czech Republic's Prime Minister *Pertr Fiala*, representing the Presidency of the Council of the EU, the Foreign Minister of Malaysia Senator Dato' Seri Diraja Dr *Zambry Abd Kadir* and Thailand's Deputy Prime Minister and Minister of Foreign Affairs *Don Pramudwinai*, signed the *EU-Malaysia Partnership and Cooperation Agreement* and the *EU-Thailand Partnership Cooperation Agreement*, respectively. Following their respective signature, the Agreements will enter into force once they have been ratified by the respective Parties. The signing of the PCAs marks an important step for the EU to launch negotiations for the long-awaited comprehensive Free Trade Agreements (hereinafter, FTAs) with Malaysia and Thailand.

The EU's Partnership and Cooperation Agreements

In November 2004, the Council of the EU had authorised the European Commission to negotiate individual Framework Agreements on Partnership and Cooperation with several ASEAN Member States, namely Malaysia, the Philippines, Singapore, Thailand, Indonesia, and Brunei Darussalam. A [press release](#) by the Council of the EU on 14 December 2022 noted that such agreements had already been concluded with Viet Nam, Indonesia, the Philippines, and Singapore. Notably, the EU's PCAs with Viet Nam, the Philippines, and Indonesia entered into force on 1 October 2016, 1 March 2018, and 1 May 2014, respectively, while the EU-Singapore PCA was signed in October 2018 and will enter into force once the ratification by all EU Member States has been completed.

PCAs are legally binding agreements between the EU and third countries that aim at enhancing political dialogue on issues of global concern and to extend mutually beneficial cooperation in a wide number of policy areas, such as human rights, environment, energy, and trade cooperation, thereby creating a strengthened framework for bilateral relations. Unlike trade agreements that contain binding commitments concerning trade liberalisation and trade facilitation, PCAs focus on enhancing cooperation.

Negotiations for the EU-Malaysia and EU-Thailand PCAs

Malaysia and Thailand are important trading partners for the EU. In 2020, bilateral trade between the EU and Malaysia amounted to EUR 35.2 billion, while the total bilateral trade between the EU and Thailand amounted to EUR 29 billion. Currently, the EU's bilateral relations with Malaysia and Thailand are governed by the 1980 *EU-ASEAN Cooperation Agreement*, which establishes a framework for economic cooperation and development.

The EU-Malaysia PCA negotiations were formally launched in October 2010 and, following the conclusions of the negotiations, the text of the PCA was initialled on 6 April 2016. The negotiations of the EU-Thailand PCA were launched in March 2013, but were subsequently put on hold in 2014 due to the political situation in Thailand. The negotiations were resumed on 13 July 2021, and concluded on 11 June 2022. On 2 September 2022, the EU and Thailand

finalised the text of the EU-Thailand PCA (see *Trade Perspectives, Issue No. 17 of 19 September 2022*).

Overview of the EU's PCAs with Malaysia and Thailand

The signing of the EU-Malaysia PCA and of the EU-Thailand PCA represent significant milestones in bilateral relations between the Parties. Both PCAs recognise the importance of enhanced cooperation in various important areas such as trade, investment, agriculture, climate change and energy, based on the principles of “*dialogue, mutual respect, equal partnership, consensus and respect for international law*”. The EU-Malaysia PCA consists of ten ‘Titles’ and 60 articles, while the EU-Thailand PCA consists of eight ‘Titles’ and 64 articles. While the EU-Malaysia PCA is divided into slightly more titles than the EU-Thailand PCA and structured differently, both PCAs contain commitments on cooperation in the same areas, *inter alia*: 1) Bilateral, regional, and international cooperation; 2) Cooperation on trade and investment issues, providing commitments on SPS and TBT measures; and 3) Cooperation in other sectors, including the issues of human rights and the environment. While the EU-Malaysia PCA establishes a dedicated title for cooperation on science, technology and innovation, which covers cooperation in biotechnology and cybersecurity, similar provisions are provided under the title on ‘*Cooperation in other sectors*’ under the EU-Thailand PCA. It is worth noting that a substantial difference concerns the scope of commitments on cooperation in trade-related areas, where the EU-Thailand PCA covers additional areas.

Trade dimensions covered by the PCAs

While focusing on cooperation, both the EU-Thailand PCA and the EU-Malaysia PCA contain several important commitments on trade-related issues under the Title on ‘*Cooperation on Trade and Investment*’, which essentially mandates the Parties to engage on trade and investment-related matters in order to strengthen and advance bilateral and multilateral trade. The scope of trade-related issues in both PCAs include sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT), as well as issues related to customs, investment, competition policy, services, and intellectual property rights.

With respect to cooperation on SPS matters, under both PCAs with the EU, the Parties commit to engage in dialogue and exchange of information on their respective SPS measures. Cooperation on TBT covers the commitment to promote the use of international standards and accreditation, as well as exchanging information on standards, conformity assessment procedures, and technical regulations.

As the negotiations for the EU-Thailand PCA were concluded only in 2022, the scope of the commitments on trade and investment cooperation agreed under the EU-Thailand PCA is more comprehensive, covering several emerging issues absent from the EU-Malaysia PCA. Most notably, this concerns commitments on: 1) Sustainable food systems, under which the EU and Thailand intend to cooperate in promoting the global transition towards sustainable food systems; 2) Digital Trade, under which the Parties commit to exchange information on regulatory matters in the context of digital trade; and 3) Anti-dumping, under which the Parties reaffirm their WTO rights and obligations on anti-dumping, and “*accord a high level of importance to cooperation in the field of anti-dumping*”.

Commitments on sustainable development

The EU-Malaysia PCA and the EU-Thailand PCA both emphasise the importance of cooperation on sustainable development by reaffirming the Parties’ commitment to address climate change and globalisation. In terms of scope, both PCAs contain dedicated provisions on ‘*Energy*’ and ‘*Environment and natural resources*’. Unlike the EU-Thailand PCA, the EU-Malaysia PCA does not contain a dedicated provision on climate change. However, the EU-Malaysia PCA contains a provision on green technology, which is absent in the EU-Thailand PCA, governing the Parties’ commitment to cooperation with a view to facilitate the incorporation of green technology in various sectors, such as energy and buildings.

With respect to energy, the EU-Malaysia PCA and the EU-Thailand PCA state that the Parties are to endeavour to enhance cooperation with a view of, *inter alia*, “developing new, sustainable, innovative and renewable forms of energy”. With respect to environment and natural resources, both PCAs stipulate that the Parties are to endeavour to continue and strengthen their cooperation on the protection of the environment, such as to enhance cooperation to protect forest resources and prevent illegal transboundary movement of hazardous waste.

Article 39 of the EU-Malaysia PCA specifically recognises methods for addressing environment-related issues, such as through regional programmes and the exchange of best practices. Such tools could be utilised by the EU and Malaysia to discuss concerns about respective developments and legislative initiatives. One example of such enhanced dialogue could be the EU’s controversial *Proposal for a Deforestation-free Products Regulation*, which was published on 17 November 2021 and agreed by the European Parliament and the Council of the EU on 6 December 2022.

According to Malaysia’s Deputy Prime Minister Datuk Seri Fadillah Yusof, the EU’s forthcoming *Deforestation-free Products Regulation* would be “detrimental to free and fair trade and could result in adverse effects on the global supply chain”. Deputy Prime Minister Datuk Seri Fadillah Yusof further stated that Malaysia stands ready to further enhance partnership and engagement relating to the *Deforestation-free Products Regulation*, building on the signing of the EU-Malaysia PCA. Ultimately though, such issues of particular trade relevance should be addressed in the context of trade negotiations, ideally within the context of the future negotiations for an EU-Malaysia Free Trade Agreement. Hopefully, the damaging spiral of unilateral impositions and retaliatory reactions can be avoided and these important objectives can be advanced through bilateral instruments that acknowledge the respective objectives, constraints, realities on the ground, and special financial, trade, and development needs.

Next step: Negotiations for preferential trade agreements?

At the EU-ASEAN Commemorative Summit in December 2022, the EU and ASEAN discussed a wide range of issues, including economic cooperation and trade. The Leaders committed to “explore other avenues to promote cooperation in areas of mutual interest, while reaffirming a future EU-ASEAN free trade agreement as a common long-term objective”. At the Summit, the President of the European Commission Ursula von der Leyen reportedly encouraged Malaysia, the Philippines, and Thailand to create the “right conditions” to resume trade negotiations.

In 2007, the EU had launched negotiations for the establishment of a region-to-region FTA with ASEAN as a whole, but, in March 2009, the EU and ASEAN agreed to suspend regional negotiations, which was followed by the EU Member States’ approval for the EU to pursue FTA negotiations with individual ASEAN Member States. Agreements with Singapore and Viet Nam have been concluded, while negotiations with Indonesia are ongoing and progressing at a slow pace. The EU had begun negotiations for an FTA with Malaysia in October 2010, though the negotiations were put on hold in 2012. In March 2016, the EU and Malaysia discussed resuming trade negotiations and, from 2016 to 2017, a stocktaking exercise was conducted to assess the possibility of resuming the trade talks. EU-Thailand trade negotiations had been launched in March 2013, but were suspended in May 2014 due to the political situation in Thailand. While Thailand has shown increasing interest to resume negotiations in recent months, the EU has so far been reluctant to commit, only noting that negotiations would resume when the conditions are right.

The signing of the PCAs can be considered a key step towards the resumption of trade negotiations with important ASEAN trading partners. While there is no direct link between a PCA and the FTA negotiation process, the EU-Malaysia PCA and EU-Thailand PCA pave a promising path for the Parties to resume trade negotiations, which would eventually improve business opportunities for industries and expand market access. As the PCAs contain commitments on cooperation in essential areas, including on trade, the future EU-Malaysia

FTA and EU-Thailand FTA could build upon the commitments that have been agreed under the PCAs. These bilateral agreements would also allow for the discussion and resolution of important trade irritants that risk poisoning the trade and diplomatic relations within an already difficult and polarised international context. Interested stakeholders should diligently review the agreed commitments and support the Parties in the context of relaunching trade negotiations.

Causing consumer confusion? Is there a need to review the EU rules on food date labelling?

Most pre-packed foods in the EU display a date mark and accompanying wording that explains whether the date signals a threshold in the product's safety (*i.e.*, 'use by') or its quality (*i.e.*, 'best before'). Misinterpretation by consumers of the meaning of the dates can contribute to unnecessary household food waste when the disposed products are still fit for consumption. This article discusses the issue of food date labelling, reviews the current EU rules, as well as whether a revision of the rules to ensure food safety and food waste reduction, as contemplated in the European Commission's (hereinafter, Commission) *Farm to Fork Strategy*, is indeed needed.

The 'best before' (*i.e.*, 'minimum durability') date and 'use by' date under EU law

Article 9(1)(f) on the 'List of mandatory particulars' of *Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers* (hereinafter, FIR) provides, in relevant part, that the "(...), indication of the following particulars shall be mandatory: the date of minimum durability or the 'use by' date". 'Date of minimum durability of a food' is defined in Article 2(2)(r) of the FIR as "the date until which the food retains its specific properties when properly stored".

Detailed requirements for the use of the 'best before' and 'use by' dates are regulated in Article 24 and Annex X of the FIR. With respect to the 'use by' date, Article 24(1) of the FIR importantly provides that, "In the case of foods which, from a microbiological point of view, are highly perishable and are therefore likely after a short period to constitute an immediate danger to human health, the date of minimum durability shall be replaced by the 'use by' date". The 'use by' date is not further defined, but the provision goes on stating that, "after the 'use by' date a food shall be deemed to be unsafe in accordance with Article 14(2) to (5) of Regulation (EC) No 178/2002". Article 14 of *Regulation (EC) No 178/2002 laying down the general principles and requirements of food law* establishes that "Food shall not be placed on the market if it is unsafe" and that "Food shall be deemed to be unsafe if it is considered to be: (a) injurious to health; (b) unfit for human consumption". Therefore, the 'use by' date indicates when a food is no longer considered safe, while the 'best before' date indicates the time until which the food retains its specific properties (*i.e.*, its quality) when properly stored. Importantly, when the 'best before' date has passed, the food is not deemed 'unsafe', but it is its quality that may have been diminished.

Article 24(2) of the FIR provides that the appropriate date, either the 'best before' or the 'use by' date, is to be expressed in accordance with Annex X to the FIR. Points 1(a) to (c) of Annex X to the FIR regulate how the date of minimum durability is to be indicated. First, the date is to be preceded by the words 'Best before ...', when the date includes an indication of the day, and by the words 'Best before end ...' in other cases. Second, these words are to be accompanied by either the date itself or by a reference to where the date is given on the labelling (if need be, these particulars are to be followed by a description of the storage conditions that must be observed for the product to retain its quality until the specified period). Third, the date is to consist of the day, the month and, possibly, the year, in that order and in uncoded form.

Point 1(d) of Annex X to the FIR exhaustively lists the foods that do not require an indication of the date of minimum durability, notably: fresh fruit and vegetables; wines and similar

products; beverages containing 10% or more by volume of alcohol; bakers' or pastry cooks' wares which, given the nature of their content, are normally consumed within 24 hours of their manufacture; vinegar; cooking salt; solid sugar; confectionery products consisting almost solely of flavoured and/or coloured sugars; and chewing gums and similar chewing products.

Up to 10% of EU food waste generated annually is linked to date marking

In practice, for products with longer shelf lives, food manufacturers use the '*best before*' date, while, for perishable products with shorter shelf lives, a '*use by*' date is used. Importantly, it appears that consumers are often unaware of how to interpret the food labelling date, which results in the disposal of many products that are still fit for consumption. In this context, in February 2018, the European Commission released a [Market study on date marking and other information provided on food labels and food waste prevention](#). The study analysed date labels on products of ten pre-defined food product types (*i.e.*, pre-prepared fruit and vegetables, pre-packed sliced bread, chilled fish, sliced ham, fresh milk, yoghurts, hard cheese, chilled fresh juice, pre-prepared chilled pasta, and ketchup sauce) that were purchased in eight EU Member States (*i.e.*, Germany, Greece, Hungary, the Netherlands, Poland, Slovakia, Spain, and Sweden). The study estimates that "*up to 10% of the 88 million tonnes of food waste generated annually in the EU are linked to date marking*".

The main food categories contributing to food waste were fruit and vegetables, bakery products, meat including fish and poultry, and dairy products. The study's main conclusion from the analysis of EU food waste data is that any proposals to reduce food waste by driving improvements to labelling practices should focus on those food product types for which the consumer decision to dispose of the product is likely to be informed by reading the on-pack label. Of the food product types assessed in the market research, the greatest opportunities for prevention of food waste in relation to date marking exist with respect to milk and yoghurts, fresh juices, chilled meat and fish. For other product types, the consumer decision to dispose the product is more likely to be informed by visual indicators that suggest a decline in product quality and palatability.

The study found variations in date labelling practices within product types and among EU Member States. Of the ten product types sampled for the study, only sauce, sliced bread, and fresh juice had predominantly the same type of date mark in all eight EU Member States surveyed. The other product types tended to display a '*use by*' date mark in some EU Member States, but a '*best before*' date mark in others. Some otherwise identical products manufactured by international brands even displayed a '*use by*' date in one EU Member State and a '*best before*' date in another.

Given the discrepancies and potential for consumers' confusion or misinterpretation, the study recommendations call for the elaboration of technical guidance for food businesses on how to determine shelf life, how to choose between '*use by*' and '*best before*' date labels, how to specify storage advice and open life instructions, and how to examine opportunities for possible extension of product life.

Possible revision of the rules governing date labelling

In response to the unnecessary generation of food waste, in May 2020, the Commission announced a possible revision of the rules governing date labelling within its [Farm to Fork Strategy](#), the EU's initiative for a more sustainable, healthy and fair food system. In doing so, the Commission aims at preventing food waste linked to misunderstanding and/or misuse of the date marking, referring to the '*use by*' and '*best before*' dates, whilst ensuring that any proposed change meets consumers' information needs and does not jeopardise food safety. The objective of the initiative to revise the rules on date labelling is to prevent consumers from unnecessarily disposing of foods that are past their '*best before*' date, but that are still consumable.

Based on an [impact assessment](#), the Commission proposed three options: 1) To revise the rules of application of the 'best before' date by extending the list of non-perishable foods with long shelf life, for which the 'best before' date is not required, to pasta, rice, coffee, and tea; 2) To revise the rules and abolish the concept of 'best before' date with the view to keep only one durability date that would be the 'food safety' related date (currently expressed as 'use by' date); or 3) To improve the expression and presentation of the two different types of date labels (e.g., in terms of terminology, format, visual presentation) in order to better differentiate between the food safety and quality concepts. Amendments could include alternative or additional wordings (e.g., 'best before, often good after'), additional terminology from the *Codex Alimentarius*, which foresees more options in the [General Standard for the labelling of prepackaged foods](#), such as 'expiration date' further to 'use by date' and 'best quality before date' further to 'best before' date, as well as changes in the format, lay-out or colour, such as for example imposing a mandatory graphical/visual presentation (e.g., a red colour for 'use by' dates and green colour for 'best before' dates or different symbols such as a STOP sign for 'use by' dates).

Improving consumer and manufacturer understanding of the date labelling

Addressing food waste as described in the EU's *Farm to Fork Strategy* is an important matter, as the misunderstanding and misuse of the 'best before' date by consumers often results in foods being unnecessarily wasted. Possibly extending the list of foods that do not require a 'best before' date is already helpful. However, it is also important that food safety not be compromised. A revision of the terminology used in the different languages in the EU Member States for the 'use by' and 'best before' dates might be needed, as well as increased proximity between the statement on whether the date, which is indicated somewhere else on the packaging, is a 'best before' or a 'use by' date, and the actual date stamp on the packaging to ensure that the consumer is adequately informed on whether the date is indeed a 'use by' or a 'best before' date.

To date, the Commission has not given any indication of the option that it intends to finally propose. In view of the misuse of date labelling, it appears desirable, by education and through information campaigns and guidance, to improve consumer and manufacturer understanding of the 'use by' date, as an indicator of food safety, and the 'best before' date, as an indicator of quality. In simple terms, consumers should be taught to use their senses to evaluate the quality of the food past the 'best before' date. A costly revision (for manufacturers) of the current rules is possibly not needed when the main problem of avoidable waste generation is the result of the misuse and misunderstanding of the current rules on date labelling and not of the system with two different dates as such.

A proposal by the Commission to revise the rules on date labelling was expected for the end of 2022, but has been postponed, in order to collect additional evidence, until the second quarter of 2023.

Recently adopted EU legislation

Trade Law

- [Commission Delegated Regulation \(EU\) 2023/66 of 21 October 2022 amending Regulation \(EU\) 2021/821 of the European Parliament and of the Council as regards the list of dual-use items](#)

Trade Remedies

- [Commission Implementing Regulation \(EU\) 2023/104 of 12 January 2023 amending Implementing Regulation \(EU\) 2019/159 imposing a definitive safeguard measure on](#)

imports of certain steel products following a report adopted by the World Trade Organization's Dispute Settlement Body

- *Commission Implementing Regulation (EU) 2023/99 of 11 January 2023 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain aluminium road wheels originating in Morocco*
- *Commission Implementing Regulation (EU) 2023/100 of 11 January 2023 imposing a provisional anti-dumping duty on imports of stainless steel refillable kegs originating in the People's Republic of China*

Food Law

- *Commission Implementing Decision (EU) 2023/106 of 11 January 2023 fixing the indicative allocations of Union aid to Member States for school fruit and vegetables and for school milk for the period from 1 August 2023 to 31 July 2029*
- *Commission Implementing Decision (EU) 2023/97 of 5 January 2023 identifying Cameroon as a non-cooperating third country in fighting illegal, unreported and unregulated fishing*

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

Follow us on twitter @FratiniVergano

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

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/>