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Resuming negotiations: The EU and the Philippines reengage to conclude a preferential trade agreement

On 31 July 2023, the European Commission (hereinafter, Commission) announced the decision by the EU and the Philippines to “*explore the relaunch of negotiations for an ambitious, modern, and balanced free trade agreement (FTA) – with sustainability at its core*”. On 2 August 2023, the Philippines' Secretary of the Department of Trade and Industry (DTI), *Alfredo E. Pascual*, stated that the EU and the Philippines would start a scoping exercise in September with the target to complete it before the end of 2023. A future EU-Philippines Free Trade Agreement (hereinafter, FTA) would deepen EU-Philippines relations, but also the EU's relationship with the Association of Southeast Asian Nations (hereinafter, ASEAN), and would enable the Philippines to be more competitive or on par *vis-à-vis* some of its ASEAN competitors that already enjoy preferential market access to the EU, such as Singapore and Viet Nam.

The growing importance of ASEAN markets

ASEAN is an important market, and its Member States (*i.e.*, Brunei Darussalam, Cambodia, Indonesia, Laos PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam) collectively rank as the sixth largest global economy. By 2030, ASEAN is projected to become the fourth largest ‘*single market*’ in the world, only behind the EU, the US, and China. The EU has been making efforts to strengthen its relations with ASEAN and to deepen political and economic ties with the Southeast Asian nations. Originally, the EU and ASEAN had initiated negotiations to conclude a ‘*region-to-region*’ trade agreement, but the parties agreed to put those discussions on hold, due to the complexity and sensitivity of ‘*block-to-block*’ trade negotiations. Instead, the Council of the EU decided to pursue negotiations with individual ASEAN Member States. FTA negotiations with Singapore were concluded in 2014, those with Viet Nam in 2015, and negotiations with Indonesia are still ongoing. Additionally, negotiations with Thailand will be re-launched this September and the EU is currently carrying out a scoping exercise with Malaysia.

EU-Philippines trade and trade negotiations

The EU is the Philippines' fourth largest trade partner, with bilateral trade in goods in 2022 worth over EUR 18.4 billion, while trade in services was worth EUR 4.7 billion in 2021. The Philippines is the fifth largest economy in the ASEAN region and is the EU's seventh most important trading partner in the region.

Negotiations for an EU-Philippines trade and investment agreement were initiated in 2015, but were put on hold in 2017 after two rounds of negotiations (see *Trade Perspectives*, Issue No. 12 of 17 June 2016). The Philippines is among the world's fastest growing emerging economies and the second highest economic grower in ASEAN with 7.6% GDP growth in 2022. European Commission Executive Vice-President and European Commissioner for Trade, *Valdis Dombrovskis*, stated that the EU-Philippines FTA would be a modern, comprehensive free trade agreement that would “*open new opportunities for both sides, strengthen our supply chains, and promote sustainable trade*”. The EU-Philippines FTA would also bring an opportunity to boost green investments (*i.e.*, investments considered sustainable and eco-friendly) and would contribute to both parties' objective to diversify supply lines and “*de-risk*” trade relations.

For the past months, the Government of the Philippines has been strongly advocating for the resumption of EU-Philippines trade negotiations. In December 2022, the Philippines' President *Ferdinand Marcos Jr.* held a bilateral meeting with the European Commission's President *Ursula von der Leyen* with the objective to advance the discussions to relaunch EU-Philippines trade negotiations and further meetings with trade officials and EU business communities followed.

A preferential trade agreement with the Philippines

During the month of September 2023, the EU and the Philippines aim at starting a scoping exercise with the objective to assess to which extent the EU and the Philippines share a mutual understanding regarding the future FTA. The Commission stated that, if this process were to conclude successfully, and following consultations with EU Member States, the EU and the Philippines would be in a position to resume FTA negotiations.

The EU and the Philippines intend to negotiate a comprehensive agreement and various issues look poised to be both complex and controversial, such as sustainability, human rights, digital trade, renewable energy, and raw materials. Additionally, negotiations to improve market access would be key and the Philippines will likely aim at obtaining enhanced EU market access for products that were not proposed when trade negotiations were launched in 2015, such as electric vehicles.

The relaunch of trade negotiations will be an opportunity for the EU to table its new approach for the Chapter on Trade and Sustainable Development (hereinafter, TSD). The new EU approach foresees an enforcement mechanism, which provides the possibility of sanctions as a last resort, namely in case of a breach of provisions on core labour rights and trade and climate change, and in the event of an activity by the trading partner that would defeat the purpose of the Paris Agreement. The Commission states that sustainability would be “*at the heart of this agreement*” in line with the *Commission's Communication 'The power of trade partnerships: together for green and just economic growth'*, which contains the EU's commitment to “*high levels of protection for workers' rights, for the environment, and the achievement of ambitious climate goals*”.

Additionally, in view of recent negotiations, the EU would likely propose chapters on digital trade, sustainable food systems, animal welfare, as well as on energy and raw materials. Regarding raw materials, the EU has been working to secure future supply chains in a context of environmental and geopolitical imperatives, in which stable and predictable access to critical raw materials (hereinafter, CRMs) is needed to enable the transition to ‘*green*’ and environmentally friendly technologies. This strategic shift has been impacting the EU's industrial, trade, and investment policies, which are being adjusted to secure the ever-increasing demand of CRMs that are necessary to produce, *inter alia*, renewable energies and

batteries for electric vehicles. The reliance on certain CRMs poses a risk for the EU with respect to meeting its climate objectives. The Philippines is a country with significant mineral deposits in 30% of its land area, corresponding to 9 million hectares, including gold, copper, nickel, aluminium, and chromite. The Philippines is considered one of five countries worldwide with the highest overall mineral reserves. This, combined with the Philippines' renewed efforts to harvest its renewable energy potential and recent liberalisation for foreign investors in the sector, makes the Philippines an important partner in the '*green transition*'.

Enhancing the Philippines' competitiveness

Since December 2014, the Philippines is enjoying preferential market access for trade in goods under the EU's Generalised Scheme of Preferences plus (hereinafter, GSP+). Under the GSP+, the Philippines benefits from the full removal of tariffs on two-thirds of all tariff lines. In order to become GSP+ beneficiary, the Philippines had to ratify and effectively implement 27 international conventions on human and labour rights, environmental protection, and good governance, and is subject to regular monitoring. The Philippines' GSP+ status was set to expire by the end of 2023, when the current EU GSP Regulation would expire. Given that inter-institutional negotiations on the new GSP Regulation are still ongoing, on 4 July 2023, the Commission adopted a *Proposal* to extend the validity of the current GSP Regulation for an additional four years until 31 December 2027 or "*until the moment a successor Regulation is agreed among legislators and enters into force, after an appropriate transition period*". In order to remain GSP+ beneficiaries, beneficiary countries would be required to reapply for the scheme. Additionally, the Philippines is on the path to become an upper-middle-income country, which would also remove its eligibility for GSP preferences. This serves as important motivation for the Philippines to conclude a preferential trade agreement with the EU in the coming year.

Against this backdrop, the Philippines' Secretary of the DTI *Pascual* stated that, "*to avoid disrupting the competitiveness of our GSP beneficiaries at the EU market, we need an FTA, a more permanent and robust foundation for our economic relations with the EU. This goes beyond the time-bound GSP+ coverage*". Secretary *Pascual* added that the Philippines would at the very least "*push for the benefits under the GSP+ to be carried over to the FTA*". DTI Undersecretary *Ceferino Rodolfo* noted that the Philippines could also look into certain tariff categories or products to be negotiated with the EU that were not yet considered during the negotiations from 2015 to 2017, such as electric vehicles, heated tobacco products, other tobacco-related products, and renewable energy sources, such as offshore wind platforms.

An FTA with the EU could serve as a catalyst for economic reforms and policy enhancements within the Philippines, which could lead domestic industries to improve productivity, quality, efficiency, and innovation, thereby elevating their global competitiveness. The EU-Philippines FTA could translate into cost savings and improved price competitiveness for exporters through reductions or elimination of tariffs on a range of goods. In addition, streamlined Customs procedures and reduced trade barriers could facilitate trade flows, reducing administrative burdens for businesses engaged in cross-border commerce. Moreover, the EU has been investing in '*green technology*' and in innovation across various industries. An EU-Philippines FTA, therefore, could incentivise the modernisation of domestic industries providing greater competitiveness *vis-à-vis* the Philippines' competitors, in Asia and, notably, within the ASEAN region.

Key benefits for businesses

The EU-Philippines FTA presents opportunities to both parties. For the Philippines, the EU represents a massive consumer base and a key trading partner. Enhanced preferential market access to the EU market could contribute to the expansion of Philippine exports, potentially reducing the country's reliance on other nearby markets.

The business sector, including the EU-ASEAN Business Council (EU-ABC), the European Chamber of Commerce of the Philippines (ECCP), the German-Philippine Chamber of

Commerce and Industry (GPCCI), as well as other industry associations, have been strongly advocating for the resumption of FTA negotiations for quite a while. The Executive Director of the EU-ASEAN Business Council, *Chris Humphrey*, stated that “*the recommencement of FTA negotiations between the EU and the Philippines is a most welcome development*”, which would “*not only serve to boost ties with the fast growing and dynamic economy of this South-East Asian country, but it will also help with the deepening of relations between the EU and the ASEAN region, which is one of the few bright spots in the global economy*”.

The GPCCI welcomed the relaunch of the EU-Philippines FTA and stated that “*this development reinforces the importance of the Philippines and presents exciting opportunities paving the way for deeper trade ties*”. The European Chamber of Commerce in the Philippines (ECCP) has long advocated for an EU-Philippines FTA, underlining that “*the bilateral agreement could lead to improved trade and investment opportunities, ultimately resulting in economic diversification, increased market competitiveness and openness, better employment prospects, and innovation and technological advancements*”. The ECCP notes that such Agreement “*would also help contribute towards achieving a greener, more inclusive, and sustainable future for Europe and the Philippines*”.

Time to engage

The potential of a future EU-Philippines FTA to enhance market access, boost competitiveness, and foster technological advancements should serve as a compelling rationale for the EU and the Philippines to forge closer trade relations. Interested stakeholders, including industry representatives and businesses, should play an active role and ensure that their interests are adequately considered during the negotiations to make the most out of improved and preferential market access conditions.

Indonesian micro, small and medium enterprises await the Government of Indonesia’s revision of the rules on trade through digital platforms

As announced in 2022, Indonesia’s Ministry of Trade is currently revising *Minister of Trade Regulation No. 50 of 2020 concerning Provisions for Business Permits, Advertising, Guidance, and Supervision of Business Players in Trading Through Electronic Systems* (hereinafter, *MOT Regulation No. 50 of 2020*), which reportedly aims at protecting Indonesian micro, small and medium enterprises (hereinafter, MSMEs) from the recent surge of imported products sold through electronic commerce (hereinafter, e-commerce) and social commerce platforms (e.g., a marketplace provided by a social media application, such as *TikTok Shop* and *Instagram*). Often, imported products purchased via these digital platforms are sold at low prices, making it increasingly difficult for Indonesian MSMEs to compete. To address this issue, the new rules would reportedly restrict the entry of imported goods through digital platforms, *inter alia* by imposing a minimum import price of USD 100 per product. This article provides an overview of e-commerce in Indonesia, reviews current issues, and discusses the proposed revision of *MOT Regulation No. 50 of 2020*.

Current rules governing e-commerce in Indonesia

Indonesia is one of the fastest-growing e-commerce markets in Southeast Asia. In 2023, Indonesia is home to over 213 million Internet users, and in 2022, the country accounted for around 40% of the total value of digital economy transactions in Southeast Asia, corresponding to a value of USD 77 billion. In Indonesia, e-commerce transactions are primarily governed by *Law No. 7 of 2014 on Trade*, as further implemented by *Government Regulation No. 80 of 2019 on Trade Through Electronic Systems*, and *MOT Regulation No. 50 of 2020*. *MOT Regulation No. 50 of 2020*, which was enacted on 13 May 2020, prescribes the requirements that must be fulfilled by domestic and foreign businesses engaging in e-commerce transactions. Notable provisions concern the appointment of representatives by foreign e-commerce service providers, business licensing requirements for e-commerce service

platforms, requirements relating to electronic advertisements, and the requirement for e-commerce business actors to prioritise local products and services.

Status quo of Indonesia's e-commerce market

According to a 2018 report, Indonesia's online commerce consists of two key models, namely purchases through e-commerce (e.g., businesses like *Tokopedia*, *Shopee*, *Lazada*) and social media platforms (e.g., *Facebook* and *Instagram*). In the case of social commerce platforms, goods are listed for sale, but the payment and delivery are handled separately (e.g., direct purchase through, for instance, *WhatsApp*, or through e-commerce platforms). Due to the *COVID-19* pandemic, e-commerce transactions significantly increased.

Most notably, over the past years, Indonesia has also been experiencing an increase in cross-border transactions through digital platforms. These platforms sell imported products such as cosmetics, clothing, and household equipment at very low prices, for as low as USD 1, often with 'free shipping' incentives provided by e-commerce platforms. This has become an increasing challenge for businesses based in Indonesia, particularly MSMEs, as consumers' preferences gradually shift from domestic to imported products. In addition, products imported through digital platforms can often be sold directly to Indonesian consumers without going through the regular import procedures, such as paying the relevant import duties. Furthermore, imported products could enter Indonesia without complying with the applicable national standards, namely the *Indonesian National Standard* or 'SNI' (i.e., the nationally applicable standard in Indonesia and is mandatory for various products from mineral water, electronics, to food products) or fulfilling the marketing authorisation requirements by Indonesia's Food and Drug Monitoring Agency, which are required for domestic products. These issues have resulted in an uneven playing field for local products and increased the risk of unsafe products entering Indonesia. According to Indonesia's Minister of Cooperatives and SMEs *Teten Masduki*, without any safeguard mechanism, the Indonesian market would soon be dominated by cheap imported products, notably from China.

The proposed revisions to MOT Regulation No. 50 of 2020

While *MOT Regulation No. 50 of 2020* already requires e-commerce businesses to prioritise the promotion of domestically produced goods, this rule remains very general and does not set a concrete proportion between domestic and imported products. Additionally, *MOT Regulation No. 50 of 2020* does not specifically differentiate between e-commerce and social commerce platforms. In this context, the revision of *MOT Regulation No. 50 of 2020* is expected to protect and maintain the competitiveness of products by domestic MSMEs and to ensure product safety for consumers. Indonesia's Minister of Cooperatives and MSMEs further emphasised that, by restricting imports and sales through digital platforms, the price of imported products would "not beat prices of micro, small, and medium enterprises' products".

Indonesia's Minister of Trade *Zulkifli Hasan* made a number of statements concerning the proposed new rules. The revised *MOT Regulation No. 50 of 2020* would define social commerce platforms, such as *TikTok Shop* and *Facebook*, as one form of e-commerce organisers, and would reiterate the need for these platforms to obtain the same permits, and pay certain taxes, as e-commerce platforms. Consequently, social media platforms selling certain products to consumers in Indonesia would need to obtain another permit from the Ministry of Trade, in addition to their operational permit. The new rules would also prohibit social media platforms to produce their own products or become wholesalers.

To ensure a level playing field for domestic and imported products, the revision would also require products purchased through online platforms to be subjected to the same requirements as domestic products. Notably, imported goods would be required to comply with certification requirements, such as the *Indonesian National Standard* or marketing authorisation requirements by Indonesia's Food and Drug Monitoring Agency. The revision of *MOT Regulation No. 50 of 2020* would also mandate e-commerce sellers to ensure that their products use descriptions in Indonesian and provide proof of standard compliance.

The controversial minimum price

The most controversial aspect of the revision is the establishment of a minimum price for imported goods. To protect domestic businesses from the surge of lower-priced imports sold through online platforms, the revised *MOT Regulation No. 50 of 2020* is expected to impose a minimum import price of USD 100 per product (*i.e.*, approximately IDR 1.5 million). For purposes of implementation, Indonesia's Ministry of Trade plans to issue a '*positive*' list detailing goods under the value of USD 100 that would still be allowed for imports. Indonesia's Deputy Minister of Trade *Jerry Sambuaga* noted that the proposed positive list would prioritise raw materials that cannot be produced domestically and could be processed by the industry and resold for export, consequently eliminating consumer goods from the list.

This planned revision received mixed responses from experts and relevant industries. The Secretary General of the *Indonesian MSME Association*, *Edy Misero*, stated that, the prohibition of imports of products below USD 100, would allow Indonesian MSMEs to "*seize the market at this level*". On the other hand, the chairperson of the *E-commerce Logistics Entrepreneurs Association*, *Sonny Harsono*, noted that the universal minimum price would "*create a risk of illegal import activities*", especially for products such as cell phone accessories. Chairperson *Harsono* also noted that, while e-commerce platforms are available in other countries, other countries impose additional taxes on those goods, instead of restricting their sales. The Vice Chairman of Communication and Informatics within the Indonesian Chamber of Commerce and Industry (Kadin), *Firlie Ganinduto*, stated that import restrictions should be in line with the current demand and supply of goods in the domestic market and that the import restriction might have a negative impact on the national economy as "*it may trigger inflation due to massive supply changes in the market*".

The art of regulating

While it is understandable that the Government of Indonesia sees the '*urgency*' to effectively address the influx of low-priced imports and to protect domestic MSMEs against '*predatory pricing*', Indonesia must ensure that the proposed measures do not directly limit or restrict cross-border imports through digital platforms and that they are consistent with international trade rules.

The requirement for imported products purchased through digital platforms to be subjected to the same requirements as domestic products, such as the *Indonesian National Standard*, would be the most appropriate approach. Under the WTO's *Agreement on Technical Barriers to Trade*, the imposition of technical regulations, standards, and conformity assessment procedures is permitted, to the extent that they are non-discriminatory and do not create unnecessary obstacles to trade. Possibly, by subjecting foreign producers to new requirements, the price of the final product would also increase. Still, the Government of Indonesia needs to ensure that the requirements imposed on imported products are not more restrictive than those applicable to domestic products.

Reservations have also been flagged vis-à-vis the legality of the minimum import price under the applicable WTO rules and principles. Notably, the proposed prohibition on the imports of products below USD 100 and the corresponding '*positive*' list in the revised of *MOT Regulation No. 50 of 2020* would likely constitute an unnecessary barrier to cross-border e-commerce trade and would likely constitute a *de facto* import prohibition prohibited under Article XI of the *General Agreement on Tariffs and Trade 1994* (hereinafter, GATT 1994). Article XI of the GATT 1994 prohibits a WTO Member from imposing import and export restrictions or prohibitions other than duties, taxes, or other charges which could be made effective through, *inter alia*, minimum import price. Imposing these measures could trigger WTO Members to initiate a WTO dispute and expose Indonesian businesses to potential retaliatory measures by trading partners. Furthermore, the minimum import price would likely be inconsistent with Customs valuation rules and would result in unjustified restrictions to trade that are premised

on the application of higher import duties than what Indonesia may be entitled to under its GATT Schedules of Concessions.

Way forward

On 30 August 2023, Indonesia's Minister of Trade *Hasan* expressed his reluctance to rush the publication of the revised *MOT Regulation No. 50 of 2020*, noting that the revision “*should be done carefully to avoid any mistake*”. This appears reasonable, given the likely trade restrictions that it would cause. Therefore, to ensure that the proposed changes would not harm existing e-commerce businesses or MSMEs, Minister *Hasan* stated that stakeholders are still allowed to provide their opinions and suggestions on the proposed revisions to the Ministry of Trade, particularly regarding the minimum import price. As of early September 2023, the draft revised *MOT Regulation No. 50 of 2020* is still at the harmonisation stage, which refers to the process of harmonising and streamlining the draft Regulation with existing laws and regulations at the Ministry of Law and Human Rights. Interested stakeholders and businesses should monitor the revision of *MOT Regulation No. 50 of 2020* and submit their views to the Government of Indonesia, as this regulatory initiative might significantly impact cross-border transactions of goods via online platforms.

The French *Conseil d'État* requests a preliminary ruling from the Court of Justice of the EU regarding France's ban of “meaty” terms for plant-based food products

Plant-based meat-like food continues to be very popular and the meat and agricultural sector has been opposing the use of terms traditionally used for meat and meat products for plant-based alternatives. On 29 June 2022, the Government of France adopted *Decree No. 2022-947 on the use of certain names used to designate foodstuffs containing vegetable proteins*, which prohibits the use of names designating foodstuffs of animal origin to be used to describe, market, or promote foodstuffs containing vegetable proteins (see Trade Perspectives, [Issue No. 14 of 18 July 2022](#)). On 13 July 2023, the French *Conseil d'État* (*i.e.*, the Council of State, an institution of the French Government that acts both as legal adviser of the executive branch and as the supreme court for administrative justice) has requested the Court of Justice of the EU (hereinafter, CJEU) to respond to preliminary questions on the compatibility of *Decree 2022-947* with EU law. In 2022, three applications had been brought before the *Conseil d'État* to annul *Decree No 2022-947* for excess of power.

This article discusses the relevant French legislation and looks at the situation at the EU level where, different from dairy terms such as “*milk*” and “*yoghurt*”, “*meaty*” terms like “*burger*” and “*sausage*” are not reserved for meat and meat products. France became the first EU Member State to impose such a ban, while the EU rejected in 2020 a similar proposal that would have resulted in EU-wide restrictions.

France's Decree on the use of certain names to designate foodstuffs containing vegetable proteins

The purpose of *Decree No. 2022-947* (hereinafter, Decree) is to lay down rules on the use of names designating products of animal origin and foodstuffs derived therefrom, for the purpose of describing, marketing, or promoting foodstuffs containing vegetable proteins. The Decree implements Article L. 412-10 of France's [Consumer Code](#) in its version resulting from Article 5 of *Law No. 2020-699 of 10 June 2020 on the transparency of information on agricultural and food products*, which provides that “*Names used to designate foodstuffs of animal origin may not be used to describe, market, or promote foodstuffs containing vegetable proteins. A decree shall fix the share of vegetable proteins beyond which this denomination is not possible. This decree shall also define the modalities of application of this article and the penalties incurred in the event of non-compliance*” (unofficial translation). The Decree states in its introduction that it would “*not be possible to use the terminology specific to the sectors traditionally*

associated with meat and fish to refer to products not belonging to the animal kingdom and which, in essence, are not comparable” (unofficial translation).

Article 2 of the Decree provides that, *“to designate a processed product containing vegetable proteins, it is prohibited to use: 1) A legal name for which no addition of vegetable proteins is provided for by the rules defining the composition of the food concerned; 2) A name referring to the names of species and groups of animal species, morphology or animal anatomy; 3) A name using the specific terminology of butchery, charcuterie or fishery; 4) A name of a food of animal origin representative of commercial uses” (unofficial translation).* Article 3 of the Decree provides for derogations from Article 2 by virtue of which *“the name of a food of animal origin may be used: 1) For foodstuffs of animal origin containing vegetable proteins in a determined proportion when such a presence is provided for by the regulations or mentioned in the list annexed to this decree; 2) To designate flavourings or food ingredients with flavouring properties used in foodstuffs” (unofficial translation).*

The Annex to the Decree contains a list of names of foodstuffs of animal origin, which may contain vegetable proteins and the maximum share of vegetable proteins that may be contained in the foodstuffs for which those names are used. The list includes, *inter alia*, the terms *“preparation of minced meat”* (7.0% vegetable protein allowed), *“bacon”* (0.5%), *“bresaola”* (0,5%), *“sausage”* (0,5%), and *“omelette”* (0.1%). [Decree No. 2022-947](#) was due to enter into force on 1 October 2022, but was suspended by the *Conseil d’État*, on the basis of appeals lodged against it.

The European Consumer Organisation *BEUC* [noted](#) on 20 December 2021 that the Decree contradicts the EU’s *Farm to Fork Strategy* and *Europe’s Beating Cancer Plan*, which recognise the need to promote a more plant-based diet with less red and processed meat in the EU, in the interest of citizens’ health and of the environment. *BEUC* noted that *“the use of culinary names associated with meat, meat cuts or fish on plant-based foods (such as ‘steak’, ‘sausage’, ‘burger’) makes it easier for consumers to know how to integrate these products within a meal, and as such should not be banned”*.

The EU legal framework for “meaty” and dairy names for plant-based products

Also at the EU level, there has been a debate on the use of *“meaty”* and dairy names for plant-based products. For plant-based dairy names, the debate was mostly settled on 14 June 2017, when the CJEU handed down its judgment in Case C-422/16 *TofuTown*. The CJEU held that purely plant-based products, such as tofu or soya, may not, in principle, be marketed with designations such as *“milk”*, *“cream”*, *“butter”*, *“cheese”* or *“yoghurt”*, which, under [Regulation \(EU\) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products](#) (hereinafter, CMO Regulation), are reserved for animal products. The CJEU observed, in particular, that the addition of descriptive or explanatory terms indicating the plant origin of the product concerned, and/or that it does not contain animal products, cannot completely exclude the likelihood of confusion on the part of consumers. As regards the principle of equal treatment, the CJEU held that each sector in the CMO Regulation embodies features specific to it and that, as a result, a comparison of the technical rules and procedures adopted in order to regulate the various sectors of the market cannot constitute a valid basis for the purpose of proving discrimination between dissimilar products, which are subject to different rules.

However, for meat products, with a few exceptions, there are no legal names similar to those for dairy products. Annex VII to of the CMO Regulation contains only general sales descriptions for meat of bovine animals (like *“veal”* in English), but currently no different language versions of meat products like *“sausage”*, *“prosciutto”*, or *“Schnitzel”*. In the context of the Commission’s proposal revising the CMO Regulation, some Members of the European Parliament had proposed an [amendment](#) that intended to reserve the use of meat-related terms and names such as *“steak”*, *“sausage”*, or *“burger”* *“exclusively for products containing meat”*. However, in October 2020, the European Parliament rejected the amendment.

Challenge of Decree No. 2022-947 in France

By three separate applications, on 18 July 2022 by the association *Protéines France*, on 30 August 2022 by the *European Vegetarian Union* (EVU) and the *Association Végétarienne de France* (AVF), and on 21 October 2022 by the company *Beyond Meat*, the *Conseil d'État* was requested to annul *Decree No 2022-947* for excess of power. The applicants questioned the compatibility of the Decree with EU law, specifically whether EU Member States are allowed to introduce their respective laws on plant-based food names. In its [meeting of 12 July 2023](#), the 9th and 10th chambers of the *Conseil d'État* decided to join the three cases, and to refer the joined case to the CJEU to provide clarification. On 13 July 2023, the *Conseil d'État* requested the Court of Justice of the EU to answer preliminary questions on the compatibility of *Decree 2022-947* with EU law. The *Conseil d'État* considers that the pleas in law put forward by the applicants raise a number of questions relating to the interpretation of [Regulation \(EU\) No. 1169/2011 on the provision of food information to consumers](#) (hereinafter, FIR), more particularly, whether the matters dealt with by the contested Decree have been specifically harmonised within the meaning of Article 38(1) of the FIR, which states that “As regards the matters specifically harmonised by this Regulation, Member States may not adopt nor maintain national measures unless authorised by Union law”, by Articles 7 and 17 thereof. Article 7 requires consumers to be provided with information that does not mislead them as to, for instance, the identity, nature and qualities of food. Article 17 provides that the name by which the food is identified is, in the absence of a legal name, its usual name or a descriptive name.

On 23 August 2023, the Government of France [notified](#) to the European Commission a new Decree, to replace the challenged *Decree No 2022-947*. The draft Decree regulates the use of designations traditionally designating foodstuffs of animal origin for the description, marketing, or promotion of foods based on vegetable proteins produced and marketed in France. However, different from *Decree No 2022-947*, the draft Decree contains two annexes. Along the lines of the Annex to *Decree No 2022-947*, Annex 2 provides a list of terms authorised for the designation of foodstuffs of animal origin which may contain plant proteins and the maximum proportion of vegetable proteins that may be contained in the foodstuffs for which these terms are used. Different from *Decree No 2022-947*, Annex 1 sets out a list of terms, including fillet, steak, escalope, and ham, whose use is prohibited for the designation of foodstuffs containing vegetable proteins. The new Annex 1 with a list of specific names replaces the general rules on prohibited names in *Decree No 2022-947* “using the specific terminology of butchery, charcuterie or fishery” and “of a food of animal origin representative of commercial uses”, which were challenged before the *Conseil d'État*. In a [statement](#) published on 4 September 2023, France’s Minister of Agriculture and Food Sovereignty *Marc Fesneau* stated that the Decree would “be signed and published three months after the notification to the Commission” and that its objective is “to put an end to misleading claims as provided for by law, by using names relating to meat products for foodstuffs that do not contain them. It is an issue of transparency and loyalty which meets a legitimate expectation of consumers and producers”.

Outlook

Once the CJEU provides its responses to the preliminary questions, the *Conseil d'État* will resume the disputed case. The ruling by the CJEU is expected to determine whether EU law has already harmonised food names and labels to an extent that does not allow EU Member States to further regulate this area. Awaiting the judgement of the CJEU, developments on the use of “meaty” names for plant-based products should be carefully monitored and stakeholders should be prepared to participate in the debate by interacting with relevant EU Institutions, trade associations, and other affected stakeholders.

Recently adopted EU legislation

Trade Law

- *Commission Delegated Regulation (EU) 2023/1686 of 30 June 2023 amending Delegated Regulation (EU) 2021/1698 as regards certain procedural requirements for the recognition of control authorities and control bodies that are competent to carry out controls on operators and groups of operators certified organic and on organic products in third countries and certain requirements on their supervision, C/2023/4321*

Customs Law

- *Commission Implementing Regulation (EU) 2023/1629 of 9 August 2023 amending Implementing Regulation (EU) 2020/761 as regards the quantities that may be imported under certain tariff quotas in the sectors of sugar and of poultry following the agreement between the European Union and the Federative Republic of Brazil*

Trade Remedies

- *Commission Implementing Regulation (EU) 2023/1649 of 21 August 2023 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2021/1930 on imports of birch plywood originating in Russia, by imports of birch plywood consigned from Türkiye and Kazakhstan, whether or not declared as originating in Türkiye and Kazakhstan, and making imports of birch plywood consigned from Türkiye and Kazakhstan subject to registration*
- *Commission Implementing Regulation (EU) 2023/1648 of 21 August 2023 imposing a definitive anti-dumping duty on imports of certain coated fine paper originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*
- *Commission Implementing Regulation (EU) 2023/1647 of 21 August 2023 imposing a definitive countervailing duty on imports of certain coated fine paper originating in the People's Republic of China following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council*
- *Commission Implementing Regulation (EU) 2023/1617 of 8 August 2023 amending Commission Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China*
- *Commission Implementing Regulation (EU) 2023/1618 of 8 August 2023 imposing a definitive anti-dumping duty on imports of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*
- *Commission Implementing Regulation (EU) 2023/1631 of 11 August 2023 initiating an investigation concerning possible circumvention of the countervailing measures imposed by Implementing Regulation (EU) 2022/433 on imports of stainless steel cold-rolled flat products originating in Indonesia, by imports of stainless steel cold-rolled flat products consigned from Taiwan, Türkiye and*

Vietnam, whether declared as originating in Taiwan, Türkiye and Vietnam or not, and making imports of stainless steel cold-rolled flat products consigned from Taiwan, Türkiye and Vietnam subject to registration

- *Commission Implementing Regulation (EU) 2023/1632 of 11 August 2023 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2021/2012 on imports of stainless steel cold-rolled flat products originating in Indonesia, by imports of stainless steel cold-rolled flat products consigned from Taiwan, Türkiye and Vietnam, whether declared as originating in Taiwan, Türkiye and Vietnam or not, and making imports of stainless steel cold-rolled flat products consigned from Taiwan, Türkiye and Vietnam subject to registration*
- *Commission Implementing Regulation (EU) 2023/1637 of 16 August 2023 initiating an investigation concerning possible circumvention of the countervailing measures imposed by Implementing Regulation (EU) 2019/2092 on imports of biodiesel originating in Indonesia by imports of biodiesel consigned from the People's Republic of China and the United Kingdom, whether declared as originating in the People's Republic of China and the United Kingdom or not, and making such imports subject to registration*

Food Law

- *Commission Implementing Regulation (EU) 2023/1644 of 17 August 2023 amending Annexes V and XIV to Implementing Regulation (EU) 2021/404 as regards the entries for the United Kingdom and the United States in the lists of third countries authorised for the entry into the Union of consignments of poultry, germinal products of poultry and fresh meat of poultry and game birds*
- *Commission Implementing Regulation (EU) 2023/1700 of 6 September 2023 amending Annexes V and XIV to Implementing Regulation (EU) 2021/404 as regards the entries for Canada, Chile, the United Kingdom and the United States in the lists of third countries authorised for the entry into the Union of consignments of poultry, germinal products of poultry and fresh meat of poultry and game birds*
- *Commission Delegated Regulation (EU) 2023/1674 of 19 June 2023 amending Delegated Regulation (EU) 2021/630 as regards the inclusion of certain spreads and preparations for making beverages containing cocoa, certain prepared foods obtained from cereals or cereal products, certain prepared foods obtained from rice and other cereals, certain chips and crisps, and certain sauces and condiments in the list of composite products exempted from official controls at border control posts and amending Annexes I and III to Delegated Regulation (EU) 2019/2122*
- *Commission Implementing Regulation (EU) 2023/1701 of 6 September 2023 fixing the import duties applicable to certain types of husked rice from 7 September 2023*
- *Commission Delegated Regulation (EU) 2023/1606 of 30 May 2023 amending Delegated Regulation (EU) 2019/33 as regards certain provisions on protected denominations of origin and protected geographical indications for wine and on the presentation of compulsory particulars for grapevine products and specific rules for the indication and designation of ingredients for grapevine products, and Delegated Regulation (EU) 2018/273 as regards the certification of imported wine products*

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