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The EU and the US continue their negotiations on steel and aluminium: Can we hope for a WTO-consistent agreement?

On 20 October 2023, the EU and the US issued a *Joint Statement* following the 27th EU-US Summit held in Washington, DC, reaffirming their *"commitment to a transatlantic partnership that delivers for all*". The *Joint Statement* notes that both parties had made "*substantial progress"* in identifying the sources of non-market excess capacity and "*understanding of the tools to address emissions intensity in the steel and aluminum industries*". Both the EU and the US "*look forward to continuing to make progress on these important objectives in the next two months*". The *Joint Statement* follows a previous *Joint Statement* issued on 30 October 2021, in which the EU and the US had agreed to suspend additional tariffs on steel and aluminium products of EU origin, which had been imposed by the US in June 2021, and related counterbalancing measures imposed by the EU against several US imports in June 2021. Additionally, in 2021, the EU and the US had agreed to initiate discussions on a '*Global Arrangement on Sustainable Steel and Aluminium*' with the aim of addressing "*global non-market excess capacity, as well as the carbon intensity of the industries*", with negotiations set to conclude within two years. This article discusses the ongoing EU-US negotiations aimed at resolving the trade frictions and at addressing the issues of non-market excess capacity and emissions intensity, within the context of a solution that should be consistent with the rules of the World Trade Organization (hereinafter, WTO).

The EU-US agreement on steel and aluminium tariffs

On 8 March 2018, the then US President *Donald Trump* had, on the basis of Section 232 of the US' *Trade Expansion Act*, imposed additional tariffs of 25% on steel imports and of 10% on aluminium imports, in order to protect domestic US industries in both sectors from unfairly traded imports that the US Department of Commerce determined to pose a threat to US national security (see *Trade Perspectives*, Issue No. 5 of 9 March 2018). On 1 June 2018, the additional import tariffs on steel and aluminium products of EU origin started to apply and, in the same month, the EU retaliated with initial rebalancing tariffs against several US imports. Additional EU rebalancing tariffs were intended to enter into force on 1 December 2021. In June and July 2018, the EU and the US, respectively, initiated disputes at the World Trade Organization (hereinafter, WTO) against each other's measures (see *Trade Perspectives*, Issue No. 22 of 3 December 2021).

On 30 October 2021, the US and the EU issued a *Joint Statement*, in which both parties agreed to commence discussions to tackle global non-market excess capacity and reduce carbon emissions in the steel and aluminium industries. In this context, the US and the EU agreed to suspend the additional tariffs and the counterbalancing measures. More specifically, the US agreed to replace the existing additional tariffs of 25% on steel products of EU origin, and the additional tariffs of 10% on aluminium products of EU origin, with a system of tariff-rate quotas (hereinafter, TRQs). The agreement states that, from 1 January 2022, the US would allow the "*duty-free importation of steel and aluminium from the EU at a historical-based volume*". In turn, the EU suspended the rebalancing measures, namely the additional EU tariffs on certain US exports, such as motorcycles, certain clothing items, maize, certain fruit juice, and bourbon, as well as the adoption of additional rebalancing measures that were scheduled to apply from 1 December 2021.

The 2021 agreement was reflected in *Commission Implementing Regulation (EU) 2021/2083 of 26 November 2021 suspending commercial policy measures concerning certain products originating in the United States of America imposed by Implementing Regulations (EU) 2018/886 and (EU) No 2020/502*, which provides in Article 1 that, "*without prejudice to any further suspension, modification, including earlier reinstatement, the duties provided for in Implementing Regulation (EU) 2018/886 shall apply with effect from and including 1 January 2024*" (see *Trade Perspectives*, Issue No. 22 of 3 December 2021). Finally, the EU and the US agreed to suspend their respective WTO disputes in favour of arbitration procedures pursuant to Article 25 of the WTO's Dispute Settlement Understanding (DSU) (see *Trade Perspectives*, Issue No. 22 of 3 December 2021). On 17 January 2022, the EU and the US notified the WTO Dispute Settlement Body of their decision to terminate their WTO disputes in favour of arbitration and their decision to suspend arbitration without time limit.

No breakthrough at the Summit

On 20 October 2023, the President of the European Council, *Charles Michel*, and the President of the European Commission, *Ursula von der Leyen*, met with the US President, *Joe Biden*, in Washington, DC for the 27th EU-US Summit. In the days leading up to the Summit, the European Commission's Executive Vice President and European Commissioner for Trade, *Valdis Dombrovskis*, had noted that the EU viewed the global steel and aluminium arrangement as a key deliverable for the Summit and that the EU was "*working hard to agree strong and mutually-beneficial trade outcomes"* with the US and *"to make Trump-era 232 tariffs a thing of the past and seek new avenues of cooperation*". On 18 October 2023, the Chair of the European Parliament's Committee on International Trade (INTA), Member of the European Parliament *Bernd Lange* (of the Group of the Progressive Alliance of Socialists and Democrats), issued a statement, noting, *inter alia*, that "*a framework for a future Global Arrangement on Sustainable Steel and Aluminium (GSA)*" would "*be an intermediate step towards a solution that would permanently lift Trump's illegal 232 tariffs and the corresponding EU countermeasures"* and that it *"would bring relief and legal certainty for many sectors on both sides of the Atlantic that have suffered a lot in the last few years".*

Following the 27th EU-US Summit, the EU and the US issued a *Joint Statement* where the issue of the US steel and aluminium tariffs is vaguely addressed in the section on "*Promoting Rules-Based Trade and Countering Unfair Competition*". The *Joint Statement* provides, in its paragraph 30, that, on 31 October 2021, both parties had announced their intention to "*negotiate within two years an arrangement – known as the Global Arrangement on Sustainable Steel and Aluminum (Global Arrangement) – to address non-market excess capacity and emissions intensity of the steel and aluminum industries, including to foster undistorted transatlantic trade*" and that, for the past two years, the EU and the US had "*made substantial progress to identify the sources of non-market excess capacity*" and had "*also achieved a better understanding of the tools to address the emissions intensity of the steel and aluminum industries*". According to the *Joint Statement,* the EU and the US "*look forward to continuing to make progress on these important objectives in the next two months*". Notably, if there is no agreement by 31 December 2023, steel products of EU origin would be subject to

additional tariffs of 25%, and aluminium products of EU origin would subject to additional tariffs of 10%. For the EU, as provided in Article 1 of *Commission Implementing Regulation (EU) 2021/2083,* the additional (rebalancing) EU tariffs would apply again from 1 January 2024.

Maintaining a status-quo in defiance of international trade rules?

The 2021 agreement between the EU and the US raises the question of whether such agreement could be considered a '*Voluntary Export Restraint*' (hereinafter, VER), which is a prohibited trade measure under Article 11 of the WTO Agreement on Safeguards and under Article XI of the General Agreement on Tariffs and Trade (hereinafter, GATT). VERs can be defined as arrangements reached between trading partners to manage trade, limiting the supply of exports by commodity type, by country, or by volume. Based on the 2021 agreement with the US, the EU would arguably '*voluntarily*' accept to limit its exports of certain steel and aluminium products. Any exports of the relevant steel and aluminium products outside of the TRQ would "*continue to be subject to a Section 232 duty*" of 25% and 10%, respectively, which would likely mean that the out of quota exports would be very limited (see *Trade Perspectives*, Issue No. 22 of 3 December 2021). Article 11 of the 1994 WTO Agreement on Safeguards provides that a WTO Member "*shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side*". In more general terms, Article XI.1 of the GATT states that "*no prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas (...), export licences or other measures, shall be instituted or maintained by any contracting party (...) on the exportation or sale for export of any product destined for the territory of any other contracting party*".

Reportedly, the EU-US negotiations intended to address non-market excess capacity and the emissions intensity of the steel and aluminium industries have stalled due to a lack of alignment on fundamental issues. The EU insists on the compatibility of the outcome with WTO rules and it has been reported that the EU is cautious of a tariff-based measure that discriminates based on whether a product originates from a country with excess steel capacity due to distortionary government intervention, which would likely contravene WTO rules on non-discrimination. If such a measure were to be agreed under the Global Steel and Aluminium arrangement against '*like*' products coming from a different WTO Member not party to that arrangement, the measure might constitute a violation of the WTO's Most-Favoured Nation (MFN) principle contained in, *inter alia*, Article I:1 of the GATT. According to scholars, "*such an arrangement would set a worrying precedent for transatlantic protectionism and make for a blow to the rules-based trading system*". In his comments issued on 18 October 2023, INTA Committee Chair MEP *Lange* cautioned that "*any agreement should be fully WTO compatible",* which implies that the use of the EU and the US *"existing trade defence instruments to tackle non-market excess capacity",* must *"remain based on objective investigations and not on political considerations"* and *"in no way should the EU agree to a framework that would undermine the WTO, weaken the multilateral trading system and lead to even more protectionism and fragmented globalisation".*

Reportedly, the EU has been considering a tariff-based measure that distinguishes between low-carbon and carbon-intensive steel and aluminium products, with an objective of decarbonisation, as a viable solution. In this case, the EU and the US would, in the view of the proponents, be able to invoke Article XX(b) and Article XX(g) of the GATT 1994 as justification, thereby allowing otherwise inconsistent measures when they are "*necessary to protect human, animal or plant life or health"* or when they relate *"to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption*", respectively. Reportedly, the EU foresees to implement such carbon-based tax through its existing unilateral measures, such as the carbon border adjustment mechanism (hereinafter, CBAM). The CBAM is a border tax that will be imposed on certain imports to ensure that "*the price of imports reflects more accurately their carbon content*". The CBAM has also led to questions of WTO compatibility (see *Trade Perspectives*, Issue No. 12 of 18 June 2021, and Issue No. 4 of 28 February 2022) and is highly contested

among the EU's trading partners, including the US, which is reportedly not ready to adopt a carbon tax.

A bumpy road ahead?

A lot still hangs in balance before the EU and the US finally resolve this major trade irritant and bring relief and legal certainty for the EU's steel and aluminium industry, as well as the US industries affected by the EU's rebalancing measures. In October 2023, the *US Chamber of Commerce* and *BusinessEurope*, which is the Confederation of European Business, issued a statement noting, *inter alia*, that "*the health of the $7.1 trillion EU-U.S. economic relationship is critical to millions of jobs and prosperity on both sides of the Atlantic*". At the same time, however, on 20 October 2023, the President of the *US Steel Manufacturers Association*, *Philip K. Bell*, noted that "*any proposal that holds open eliminating the TRQ's for Europe before non-market excess capacity and climate issues are fully resolved should be unacceptable*".

Whatever the instrument agreed to settle this bilateral matter, restoring normal and undistorted transatlantic trade, as well as contributing to the decarbonisation of the steel and aluminium sectors, should not come at the expense of WTO rules. Interested parties should actively follow the EU-US negotiations, indicate their interests, and voice their concerns, including the systemic ones of WTO consistency that appear to be once again at stake.

ASEAN Member States agree to the mutual recognition of their Authorised Economic Operator programmes: Will it facilitate intra-ASEAN trade?

On 19 September 2023, the Customs administrations of the Member States of the Association of Southeast Asian Nations (hereinafter, ASEAN), namely Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam, signed the *ASEAN Authorised Economic Operator (AEO) Mutual Recognition Arrangement (MRA)* (hereinafter, AAMRA), which seeks to "*provide a predictable and transparent trading environment among ASEAN Member States*". The AAMRA provides assurance on the compatibility and compliance of the certification standards applied by ASEAN Member States' Customs administrations within their respective Authorised Economic Operator (hereinafter, AEO) programmes. With the AAMRA, certified ASEAN economic operators will gradually benefit from faster cargo clearance and priority treatment for cargo inspections for their goods traded throughout the entire ASEAN region.

Authorised Economic Operators

An AEO programme is a Customs-to-business partnership, whereby traders that have been recognised as "*Authorised Economic Operators*" and have worked in close cooperation with Customs administrations to ensure supply chain security, are granted Customs incentives, such as reduced controls, simplified Customs procedures, and reputational benefits. The AEO concept was introduced by the *World Customs Organization* (hereinafter, WCO) in 2007 as part of the *SAFE Framework of Standards to Secure and Facilitate Global Trade*. More specifically, Pillar Two of the *SAFE Framework of Standards* calls for "*the creation of an international system for identifying private businesses that offer a high degree of security guarantees in respect of their role in the supply chain*", noting that "*companies that demonstrate a verifiable willingness to enhance supply chain security will benefit*".

Within ASEAN, Article 52 of the *ASEAN Trade in Goods Agreement* (hereinafter, ATIGA) defines AEO as *"a party involved in the international movement of goods in any function that has been approved by the customs authorities as complying with statutory and/or regulatory requirements of Member States, taking into account international supply chain security standards"*. In accordance with Article 59 of the ATIGA, all ASEAN Member States (hereinafter, AMSs) are to "*endeavour"* to establish an AEO programme and to work towards the mutual

recognition of their AEO programmes. To date, all AMSs have put in place operational AEO programmes.

The call for mutual recognition of AEO programmes

One of the key objectives of the *SAFE Framework of Standards* is to establish an MRA for the WCO Members' AEO programmes. Under such MRA, Customs administrations in two or more countries with AEO programmes agree to: 1) Recognise the AEO authorisation or validation issued under the other programme(s); and 2) Provide "*substantial, comparable and - where possible - reciprocal benefits/facilitation to the mutually recognized AEOs*".

At a global level, various MRAs for AEO programmes have already been concluded, while others are still being negotiated. The EU, for instance, has implemented MRAs for AEO programmes with China, Japan, Moldova, Norway, Switzerland, the UK, and the US. Within ASEAN, Singapore has been the first AMS to enter into MRAs of AEO programmes with other countries, namely with Australia; Canada; China; Chinese Taipei; Japan; Hong Kong, China; the Republic of Korea; New Zealand; Thailand; the UK; and the US.

The road towards the AAMRA

The AAMRA was first suggested by Singapore in 2018 and AMSs agreed to conduct a feasibility study. The feasibility study concluded that having an MRA for AEO programmes in ASEAN would provide several benefits, namely: 1) A higher level of facilitation during cargo clearance, domestically and overseas; 2) Priority treatment if the cargo has been selected for inspection; and 3) Expedited Customs cargo clearance in the event of trade disruption. The feasibility study also concluded that, while the level of national implementation of AEO programmes varies in each AMS, *"an AAMRA was feasible"* to be established in ASEAN.

The signature and forthcoming implementation of the AAMRA appears timely in order to enhance intra-ASEAN trade and regional integration, as mandated by the *ASEAN Economic Community Blueprint 2025* (hereinafter, AEC Blueprint 2025). The *AEC Blueprint 2025* provides ASEAN's commitment to *"continue to reduce or eliminate border and behind-the-border regulatory barriers that impede trade [...]"* and emphasises AMSs' commitment to fully implementing the AAMRA by 2025.

Overview of the AAMRA

The AAMRA is divided into nine sections and comprehensively covers the requirements for the mutual recognition of AEO programmes, notably the establishment of the compatibility of AEO programmes, the requirement for AMSs to provide trade facilitation measures for AEOs from other AMSs, and the establishment of an information exchange mechanism.

Section II of the AAMRA requires AMSs to ensure the compatibility of their AEO programmes with respect to: 1) Accreditation criteria; 2) Application procedures; 3) Validation processes; 4) Authorisation processes; and 5) Monitoring and evaluation mechanisms. Section III of the AAMRA mandates AMSs to accept the validation and authorisation of each other's AEO programmes and to recognise AEOs from other AMSs *"in a manner comparable to those of its own programme"*. Importantly, AMSs must "*endeavour*" to provide a number of trade facilitation measures, notably: 1) Expedited clearance by reducing documentary checks and/or physical cargo inspection; 2) Priority checks for cargoes subject to physical inspections; and 3) Priority for expedited clearance in the event of a disruption to international trade.

To effectively implement the AAMRA, Section IV thereof states that AMSs would set up an information exchange mechanism to: 1) Regularly exchange up-to-date information on the Members (*i.e.,* companies that are granted the AEO status) of their respective AEO Programmes (*e.g.,* name and AEO reference number); 2) Provide updates on any changes made to their respective AEO programmes, such as changes in administrative procedures;

and 3) Exchange mutually agreed beneficial information, such as statistics relating to the usage of the AEO programmes and information on supply chain security.

While the AAMRA provides the AMSs' commitment to mutually recognise their AEO programmes with a view of implementing a regional AEO MRA by 2025, in true ASEAN style, the Arrangement itself is not legally binding and does not give rise to any rights and obligations on the participating AMSs. Pursuant to Section VII of the AAMRA, AMSs are to implement the commitments in the Arrangement *"in accordance with their respective domestic laws, regulations and practices, and the applicable international instruments"*. The AAMRA will be implemented in stages, with Brunei Darussalam, Indonesia, Malaysia, the Philippines, Thailand, and Singapore starting a six-month pilot implementation at the end of 2023, while the remaining AMSs are expected to join in 2024.

The current situation in ASEAN and the need for the AAMRA

The former Transport, Transit and Customs Advisor for the EU-funded ARISE Plus Regional project, which supported ASEAN from 2017 to 2023, *Kenneth Tiong*, has highlighted several challenges with respect to the implementation of the AEO programmes in ASEAN. *In primis*, it appears that, currently, not many ASEAN companies are knowledgeable about the AEO programmes, nor of their potential benefits. Mr. *Tiong* further noted that many companies were not keen to participate in the AEO programmes due to the *"tedious"* process of compliance for validation by the Customs authorities and the limited privileges or advantages, given the lack of a mutual recognition arrangement with the Customs authorities from other AMSs. In the absence of an MRA, AEOs only benefit with respect to the Customs clearance in the AMSs that they are registered in. For instance, while an AEO in Singapore may be able to save time and cost when exporting from and importing into Singapore, it is still subject to strict Customs requirements when trading in and out of other AMSs.

There also appear to be different levels of implementation of AEO programmes among AMSs, which are reflected in the process of the joint validation of AEO programmes. In 2022, Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand conducted a joint validation of their AEO programmes, where they jointly assessed and validated each other's national AEO programmes to ensure alignment with the S*AFE Framework of Standards*. At the same time, Cambodia, Lao PDR, Myanmar, and Viet Nam are still encouraging more businesses to join their AEO programmes and, once more companies have joined, they will also conduct a joint validation of their AEO programmes. Once an AMS has completed the joint validation of its AEO programme, it may start implementing the AAMRA. Therefore, the AAMRA should provide additional *momentum* for AMSs to address the challenges regarding the implementation of their AEO programmes.

How can ASEAN businesses benefit from the AAMRA?

The AAMRA is an example of an important ASEAN development that, if properly implemented, would help ASEAN businesses to save costs and time when conducting intra-ASEAN trade. In practice, the MRA for ASEAN's AEO programmes would allow businesses to reduce documentary checks and cargo inspections, thereby allowing smoother cargo clearance and flow of goods within the region.

As the pilot implementation of the AAMRA will start soon in Brunei Darussalam, Indonesia, Malaysia, the Philippines, Thailand, and Singapore, businesses should seek to become "*Authorised Economic Operators*". The requirements to be granted AEO status are different for each AMS and are reflected in the respective domestic laws. However, in general terms, a company would be granted AEO status if it is part of an international supply chain (*e.g.*, manufacturers, importers, exporters, freight forwarders) and when the assessment by the local Customs administration demonstrates high security and safety standards, financial capacity, and compliance with domestic Customs and taxation regulations.

Towards future cooperation with third countries?

The AAMRA provides concrete steps for all AMSs to enhance their AEO programmes based on their respective implementation levels. Therefore, following the full implementation of the AAMRA, AMSs would be more ready and open to the possibility of negotiating the mutual recognition of AEO programmes also with other non-ASEAN countries. In this context, the Director-General of Singapore Customs, *Tan Hung Hooi*, stated that he hoped that the AAMRA would *"provide further opportunities for AMS to negotiate with non-ASEAN partners as a bloc, furthering the role of the ASEAN Economic Community"*.

The European Commission sets new reduced limits for nitrites and nitrates as food additives – Two years for the food industry to comply

On 6 October 2023, the European Commission (hereinafter, Commission) adopted *Commission Regulation (EU) 2023/2108 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council and the Annex to Commission Regulation (EU) No 231/2012 as regards food additives nitrites (E 249-250) and nitrates (E 251-252).* In a press release, the Commission stated that "*These new significantly reduced limits protect against pathogenic bacteria (e.g., Listeria, Salmonella, Clostridia), as well as reduce the exposure to nitrosamines, some of which are carcinogenic*" and that, "*Based on a stringent scientific assessment by EFSA, the new limits were endorsed unanimously by the Member States last spring*". This article discusses the new limits for nitrites and nitrates as food additives and the *European Food Safety Authority's* (hereinafter, EFSA) evaluation of the safety of nitrites and nitrates. The article underlines that there were discussions on a ban of those additives instead of stricter limits, and that the food industry has two years to comply with the new rules.

Nitrites and nitrates are commonly used as food additives

Potassium nitrite (E 249), sodium nitrite (E 250), sodium nitrate (E 251), and potassium nitrate (E 252) are substances authorised in accordance with *Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives*. They have been used for many decades as preservatives to secure the preservation and microbiological safety of foods, in particular meat, fish, and cheese products, and to contribute to their characteristic organoleptic properties. Notably, nitrites, together with nitrates, are added to meat to keep it red and give flavour, while nitrates are used to prevent certain cheeses from bloating during fermentation. However, at the same time, the presence of nitrites and nitrates in foods can give rise to the formation of nitrosamines, some of which are carcinogenic. Therefore, there is a need to minimise the risk of formation of nitrosamines through the presence of nitrites and nitrates in foods, on the one hand, and maintain their protective effects against the multiplication of bacteria, in particular of *C. botulinum*, responsible for botulism, on the other hand.

Article 7(5) of *Regulation (EC) No 1331/2008 of the European Parliament and of the Council establishing a common authorisation procedure for food additives, food enzymes and food flavourings* allows the Commission to add, remove, or change the conditions, specifications, or restrictions associated with the presence of a substance on the EU's list of food additives approved for use in foods and their conditions of use, which is laid down in Annex II to *Regulation (EC) No 1333/2008*.

The EFSA's evaluations

To do so, the Commission had asked the EFSA to re-evaluate by 2020 all additives authorised before 20 January 2009. As part of this programme, the EFSA *re-evaluated the safety of nitrites and nitrates* in two scientific opinions published in June 2017, in which it confirmed the current acceptable daily intakes (hereinafter, ADIs) for nitrite, set by the Commission's former *Scientific Committee for Food* (SCF) in 1997 and by the *Joint FAO/WHO Expert Committee on Food Additives* (JECFA) in 2002, which are 0.06 and 0.07 milligrams per kilogram of body weight per day (mg/kg bw/day), respectively. For nitrate, both bodies set the ADI at 3.7 mg/kg

bw/day. The EFSA considered that there was some concern for the overall exposure to nitrosamines at high levels for all age groups, except for the elderly.

The new levels of nitrites and nitrates in food

The new limits set in *Commission Regulation (EU) 2023/2108* aim at protecting consumers against pathogenic bacteria, such as listeria, salmonella, and clostridium botulinum, as well as reducing exposure to nitrosamines. These stricter limits of nitrates and nitrites have been tailored to accommodate the diverse range of products and manufacturing conditions within the EU. *Commission Regulation (EU) 2023/2108* reduces the amounts of nitrites and nitrates laid down in *Regulation (EC) No 1333/2008* for the following food categories, establishing periods of application for their use at the different maximum permitted levels: 1) Ripened cheese; 2) Whey cheese; 3) Cheese products; 4) Dairy analogues, including beverage whiteners; 5) Meat preparations; 6) Non-heat-treated meat; 7) Heat-treated meat products; 8) Traditional immersion cured products; 9) Traditional dry cured products; 10) Other traditional and traditionally cured products; and 11) Processed fish and fishery products, including molluscs and crustaceans.

For example, in "*Category 08.3.4.2 (Traditional dry cured products (Dry curing process involves dry application of curing mixture containing nitrites and/or nitrates, salt and other components to the surface of the meat followed by a period of stabilisation/maturation))*", such as *jamón curado* (*i.e.*, cured ham), the maximum level of nitrites (E 249–250) amounts to 100 mg/kg until 9 October 2025, but will be reduced to 65 mg/kg from 9 October 2025. Until 9 October 2025, dry cured products may contain up to 250 mg/kg nitrates (E 251–252), which will be reduced to a maximum of 150 mg/kg from 9 October 2025.

Furthermore, *Commission Regulation (EU) 2023/2108* reduces the maximum limits for the presence of lead, mercury, and arsenic in nitrites (E 249 and E 250) and nitrates (E 251 and E 252) laid down in the specifications set out in the Annex to *Commission Regulation (EU) No 231/2012 of 9 March 2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council*.

Stricter limits instead of a ban on the use of added nitrites and nitrates

Instead of the now adopted stricter limits of nitrates and nitrites, an outright ban on the use of added nitrites and nitrates to processed meat was demanded by some. In June 2023, a *Motion for a Resolution on the draft Commission Regulation amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council and the Annex to Commission Regulation (EU) No 231/2012 as regards the food additives nitrites (E 249-250) and nitrates (E 251-252)* was adopted by the European Parliament's Committee on the Environment, Public Health and Food Safety (ENVI), which called on the Commission to, *inter alia*, "*withdraw the draft regulation and submit a new one to the committee, introducing a ban on the addition of nitrate and nitrite to processed meat, in order to prevent any risk of the appearance of carcinogenic nitro compounds, including nitrosols and nitrolyzed iron*". Over the past years, some non-profit organisations, such as *Foodwatch France*, have also called for a ban on the use of added nitrites and nitrates in food, noting that their presence in processed meats "*is one of the factors that led the International Agency for Research on Cancer (IARC) to classify these meats as carcinogenic to humans (Group 1A)"*.

However, amending the current conditions of use of nitrites and nitrates as food additives by lowering the respective maximum levels was considered more appropriate by the Commission. A 2014 study conducted for the European Commission revealed that, with some exceptions, the typical amount of nitrites added to non-sterilised meat products is lower than the established EU maximum level. According to the Commission, an *ad hoc* study launched by the Commission regarding the use of nitrites by the industry in different categories of meat products, completed in 2016, also concluded that there is a possibility to reduce the current limits of nitrites authorised in the EU legislation without compromising food safety.

Reducing nitrates and nitrites is possible

Reducing nitrates and nitrites in food and stricter nitrate and nitrite limits in food are possible, as shown by the experience gained with the application of the maximum levels for nitrites and nitrates authorised in organic meat products, and the experience of the EU Member State Denmark related to more stringent national provisions for the use of nitrites in meat products. *Commission Implementing Regulation (EU) 2021/1165 authorising certain products and substances for use in organic production and establishing their lists* only authorises the use of sodium nitrite (E 250) and potassium nitrate (E 252) in organic meat products at lower maximum levels than the maximum levels set out in *Regulation (EC) No 1333/2008* and only under the condition that it has been demonstrated to the satisfaction of the competent authority that there is no technological alternative. By *Commission Decision (EU) 2021/741 of 5 May 2021 concerning national provisions notified by Denmark on the addition of nitrite to certain meat products*, the Commission approved, for a limited period of three years, the request of Denmark to maintain more stringent national provisions on the addition of nitrites to meat products. Denmark's national provisions maintain lower maximum levels of nitrites for certain meat products, compared with the maximum levels set out in *Regulation (EC) No 1333/2008*.

The food industry is called to implement the new levels

The European Commissioner for Health and Food Safety, *Stella Kyriakides,* said that: "*By setting new limits for nitrites and nitrates additives in food, we are taking another step in this direction and delivering on another important action under Europe's Beating Cancer Plan. I now call on the food industry to swiftly implement these science-based rules, and wherever possible, to reduce them further to protect the health of citizens*". In this context, it appears that parts of the EU food industry are increasingly producing cured meats without nitrites and nitrates, in a more conscious approach to food that does not compromise on safety while also not neglecting taste. Nitrite-and-nitrate-free products are gaining popularity.

Two-year transition period

Regulation 2023/2108 does not ban nitrates and nitrites in food, but sends a clear signal to producers, prompting them to address the challenges associated with nitrites and nitrates in EU food products throughout the entire supply chain. The new stricter limits take into account the diversity of products and their manufacturing conditions across the EU. *Regulation 2023/2108* accords food businesses two years to comply with the new limits for nitrates and nitrites.

Recently adopted EU legislation

Trade Law

- *Commission Implementing Regulation (EU) 2023/2110 of 10 October 2023 fixing the trigger volumes for the years 2024 and 2025 for the purposes of possible application of additional import duties on certain fruit and vegetables*

- *Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin as regards the adoption of a recommendation on the use of movement certificates issued electronically*

- *Council Decision (EU) 2023/2216 of 16 October 2023 on the signing, on behalf of the Union, of the Agreement in the form of an Exchange of Letters between the European Union and the Argentine Republic amending the Agreement in the form of an Exchange of Letters between the European Union and the Argentine*

Republic pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the tariff-rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union

- *Council Decision (EU) 2023/2198 of 16 October 2023 on the signing, on behalf of the Union, of the Agreement in the form of an Exchange of Letters between the European Union and the Arab Republic of Egypt pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the tariff rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union*

Trade Remedies

- *Commission Implementing Regulation (EU) 2023/2120 of 12 October 2023 imposing a provisional anti-dumping duty on imports of electrolytic manganese dioxides originating in the People's Republic of China*

- *Commission Implementing Regulation (EU) 2023/2202 of 16 October 2023 amending Implementing Regulation (EU) 2019/1259 imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron originating in the People's Republic of China and Thailand*

- *Commission Implementing Regulation (EU) 2023/2180 of 16 October 2023 amending Implementing Regulation (EU) 2021/607 imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China as extended to imports of citric acid consigned from Malaysia, whether declared as originating in Malaysia or not, following a new exporter review pursuant to Article 11(4) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*

- *Commission Implementing Regulation (EU) 2023/2169 of 17 October 2023 amending Implementing Regulation (EU) 2022/1477 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2020/492, as amended by Implementing Regulation (EU) 2020/776, on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt to imports of certain woven and/or stitched glass fibre fabrics consigned from Turkey, whether declared as originating in Turkey or not*

- *Commission Implementing Regulation (EU) 2023/2159 of 17 October 2023 accepting a request for new exporting producer treatment with regard to the definitive anti-dumping measures imposed on imports of certain iron or steel fasteners originating in the People's Republic of China and amending Implementing Regulation (EU) 2022/191*

- *Commission Implementing Regulation (EU) 2023/2158 of 17 October 2023 amending Implementing Regulation (EU) 2022/1478 extending the definitive countervailing duty imposed by Implementing Regulation (EU) 2020/776, on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt to imports of certain woven and/or stitched glass fibre fabrics consigned from Turkey, whether declared as originating in Turkey or not*

Customs Law

- *Commission Implementing Regulation (EU) 2023/2218 of 16 October 2023 concerning the classification of certain goods in the Combined Nomenclature*

- *Commission Implementing Regulation (EU) 2023/2217 of 16 October 2023 repealing Regulation (EC) No 901/2007 concerning the classification of certain goods in the Combined Nomenclature*

Food Law

- *Commission Regulation (EU) 2023/2108 of 6 October 2023 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council and the Annex to Commission Regulation (EU) No 231/2012 as regards food additives nitrites (E 249-250) and nitrates (E 251-252)*

- *Commission Implementing Decision (EU) 2023/2143 of 13 October 2023 renewing the authorisation for placing on the market of products containing, consisting of or produced from genetically modified maize MIR162 pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council and amending Commission Implementing Decisions (EU) 2016/1685, (EU) 2019/1305 and (EU) 2019/2087 as regards the reference material (notified under document C(2023) 6736)*

- *Commission Implementing Decision (EU) 2023/2134 of 13 October 2023 authorising the placing on the market of products containing, consisting of or produced from genetically modified maize MON 87419 pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council (notified under document C(2023) 6729)*

- *Commission Implementing Decision (EU) 2023/2133 of 13 October 2023 authorising the placing on the market of products containing, consisting of or produced from genetically modified maize MON 89034 × 1507 × MIR162 × NK603 × DAS-40278-9 and nine sub-combinations, pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council (notified under document C(2023) 6739)*

- *Commission Implementing Regulation (EU) 2023/2145 of 16 October 2023 correcting certain language versions of Implementing Regulation (EU) 2017/2470 establishing the Union list of novel foods in accordance with Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods*

- *Commission Implementing Regulation (EU) 2023/2194 of 19 October 2023 amending Regulation (EU) No 37/2010 as regards the classification of the substance ketoprofen with respect to its maximum residue limit in foodstuffs of animal origin*

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