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EU-US Trade and Technology Council: Towards tangible results and trade facilitation?

On 4 and 5 April 2024, the EU and the US held the 6th Ministerial meeting of the EU-US Trade and Technology Council (hereinafter, TTC) in Leuven, Belgium. According to the European Commission (hereinafter, Commission), the TTC serves as a platform for the EU and the US “to coordinate approaches to key global trade, economic, and technology issues and to deepen transatlantic trade and economic relations based on shared democratic values”. Some of outcomes of the 6th EU-US TTC Ministerial meeting could have significant impact and lead to important trade facilitation with respect to digital trade tools and trade in environmentally sustainable goods and services, measures that are poised to benefit only EU and US businesses.

Establishing common approaches and standards

On 15 June 2021, when the EU-US TTC was established, it was meant to provide an opportunity for the EU and the US to resume more constructive trade relations and enhance regulatory cooperation outside of a broader preferential trade agreement. At its inception, the Commission identified seven main goals to be achieved through the TTC: 1) “Expand and deepen bilateral trade and investment”; 2) “Avoid new technical barriers to trade”; 3) “Cooperate on key policies on technology, digital issues and supply chains”; 4) “Support collaborative research”; 5) “Cooperate on the development of compatible and international standards”; 6); “Facilitate cooperation on regulatory policy and enforcement”; and 7) “Promote innovation and leadership by EU and US firms”. These objectives are reflected in the workstreams of ten technical working groups that have been established under the EU-US TTC and which translate the political decisions into deliverables, coordinate the technical work, and report back to the political level (see *Trade Perspectives*, Issue No. 17 of 24 September 2021).

The workstreams of the technical working groups can be linked to three broad themes, namely, trade, digital issues, and climate change mitigation. Within those three broader work streams, the EU-US TTC brings together technical experts from both sides to establish common or converging approaches, and to develop standards, for example regarding emerging

technologies, and fostering environmentally responsible trade in goods and technologies. The common approaches can then be integrated into respective legislative and regulatory frameworks in order to, *inter alia*, avoid trade barriers. Additionally, while discussions in the context of the TTC are not meant to lead to a preferential trade agreement, the structured bilateral cooperation under the TTC could enable the EU and US to agree on trade facilitative standards or conformity assessment procedures that are not easy to comply with by other trading partners. In a WTO-compatible manner, this could be achieved, for example, through common standards on emerging technologies and the related mutual recognition agreements (hereinafter, MRAs) with the idea that only businesses in the EU and the US would, at least initially, be able to comply with the relevant standards and benefit from such trade-facilitative instruments.

Outcomes of the 6th EU-US TTC Ministerial meeting

The 6th Ministerial meeting of the EU-US TTC built on the outcomes of the previous ministerial meetings. According to the [Joint Statement](#) issued by the EU and the US, the main outcomes concern the progress made, so far, in : 1) “*Advancing Transatlantic Leadership on Critical and Emerging Technologies*”, as regards, *inter alia*, artificial intelligence, quantum technologies, and semiconductors; 2) “*Promoting Sustainability and New Opportunities for Trade and Investment*”, regarding, *inter alia*, green public procurement, secure and sustainable supply chains, critical minerals, and trade and labour in the green transition ; 3) “*Trade, Security, and Economic Prosperity*”, covering, *inter alia*, economic security, export controls, and investment screening; and 4) “*Defending Human Rights and Values in a Changing Geopolitical Digital Environment*”, covering, *inter alia*, cooperation on online platforms, and protecting information integrity. These outcomes are analysed according to planned and concrete developments in the broad areas of trade, digital issues, and climate.

With respect to digital issues, the EU and the US seek to proactively identify and prevent potential trade issues resulting from new technologies and the diverging approaches to regulate them. This entails ‘*getting ahead of the curve*’ by identifying and preventing unnecessary barriers to trade in products linked to new technologies. One way that this has been achieved is through “*increased cooperation on interoperability of digital trade tools as well as standardisation of critical and emerging technologies to reduce the costs of trading across the Atlantic*”. In this context, the 6th EU-US TTC Ministerial meeting issued a [Joint Declaration on “Enhancing e-invoicing interoperability between the EU and the United States”](#). Essentially, this would mean aligning the relevant technical specifications for e-invoices in the EU and the US. This could entail, *inter alia*, standardising certain aspects of the “*data structure*”, which refers to the way of organising and storing data in a computer, so that the data can be accessed and used efficiently. For example, with respect to the physical addresses of customers, the EU and the US could align the representation of the features of an address, such as street, house number, postal code and location, and a country. In order to implement the [Joint Declaration on enhancing e-invoicing interoperability](#), meetings between EU and US government experts and stakeholders are to be convened “*regularly, as necessary and appropriate*”, with a first meeting planned for 2 May 2024.

Resolving technical trade barriers through cooperation on conformity assessment

In the area of trade, in particular in order to reduce trade barriers, the [Joint Statement](#) of the 6th Ministerial meeting in the section on the *Transatlantic Initiative on Sustainable Trade* (TIST), notes that the EU and the US would “*continue various efforts under the TIST umbrella, including exploring potential avenues of cooperation on conformity assessment*”. Conformity assessment is the process of verifying that a product complies with the technical requirements of the destination market relating to, *inter alia*, the protection of human safety or health, or animal and plant life or health, or the protection of the environment. The verification can be done through testing, certification, or inspection by designated laboratories or certification bodies. As noted in the [Joint Statement](#) of the 4th EU-US TTC Ministerial meeting, held in May 2023, conformity assessment is being considered “*across a range of sectors, such as machinery*”. In order to prevent technical barriers caused by divergences in conformity

assessment procedures, Article 5.4 of the Agreement on Technical Barriers to Trade (TBT) encourages WTO Members to harmonise their conformity assessment procedures by relying on guides or recommendations issued by international standardisation bodies and Article 6.3 of the TBT Agreement encourages agreements between WTO Members pertaining to the mutual acceptance of conformity assessment results.

On 3 April 2023, in a [Joint Statement](#), the US-based *Information Technology Industry Council* (ITI) and *Orgalim*, which represents Europe's technology industries, called on the EU and the US to conclude an agreement on conformity assessment, noting that, "*In the absence of harmonisation of standards based on globally relevant international standards, which remains our preferred scenario, establishing an agreement on conformity assessment would bring several benefits to transatlantic trade*". More specifically, the *Joint Statement* calls for the extension of the [1998 EU-US MRA](#) on conformity assessment for various sectors, such as telecommunication equipment and medical devices, to also include "*additional sectors, including among others machinery, electrical equipment, AI and cybersecurity to ensure balanced benefits on both sides*".

Essentially, the commitment by both the EU and the US to accept the conformity assessment results issued by the other Party's designated conformity assessment bodies would facilitate trade of the covered products. For example, certificates issued by designated EU laboratories verifying that a specified product intended for export to the US conforms to the US' safety requirements, would be accepted by the US authorities and *vice versa*. This would relieve exporters of unnecessary delays and related costs. At the same time, '*like*' products from other trading partners without similar arrangements on conformity assessment, would still need to undergo the conformity assessment procedures in both the EU and the US, likely incurring increased costs and requiring additional time.

Government procurement as a tool to advance certain environmental policies

With respect to the cooperation on accelerating the transition to climate-neutrality, one of the concrete outcomes of the 6th EU-US Ministerial meeting concerns "*green public procurement*", which is defined "*as a set of policies, actions and practices that leverage acquisitions to address all types of environmental challenges*". The EU and the US have large and accessible public procurement markets, largely due to the fact that both have liberalised access to public procurement on the basis of the WTO's Agreement on Government Procurement (hereinafter, GPA) and preferential trade agreements. The GPA is a plurilateral agreement, which means that it is only binding on those WTO Members that have accepted to be bound by it. The GPA provides rules aimed at ensuring fair, transparent, and non-discriminatory conditions of competition in the procurement of goods and services specified in the Parties' Schedules of Commitments. The GPA allows the Parties in their national procurement rules to include criteria that serve broader purposes, such as the protection of the environment.

One of the outcomes of the 6th Ministerial meeting is the [Joint EU-US Catalogue of Best Practices on Green Public Procurement](#), which is intended to "*accelerate the uptake of more sustainable and greener solutions*" in support of both Parties' "*common environmental and climate goals*". The *Joint Catalogue* "*presents a collection of policies, practices, and actions used across all stages of the procurement process, from the strategic planning to pre-procurement, procurement, and post-contract award stage, and addresses all types of environmental and climate challenges, such as reduction of greenhouse gas emissions, energy efficiency or promoting circular economy approaches*" and is intended to "*serve as an inspiration for policymakers and suppliers, as well as provide ideas for the uptake of green solutions in public procurement globally*".

The GPA allows the application of technical specifications aimed at the protection of the environment and the evaluation of tenders using the environmental implications of a good or service as a criterion and a key requirement of the *Joint Catalogue* is that "*at all stages of the procurement process, measures relating to green public procurement procedures must be prepared, adopted, and applied in a manner consistent with the Parties' international*

procurement obligations, such as the World Trade Organization (WTO) Agreement on Government Procurement (GPA)". Some examples set out in the *Joint Catalogue* concern the possibility for public authorities to "rely on the EU public procurement directives, to exclude a supplier from a procurement" due to "non-compliance with applicable national, EU or international environmental laws". Going forward, the *Joint Statement* from the 6th EU-US Ministerial meeting states that the EU and the US would "continue to work together on how to use the *Joint Catalogue* and maximise its impact".

Towards tangible outcomes of the TTC discussions?

As the EU and US continue striving towards achieving the objectives of the TTC and pursuing more tangible results for business on both sides, interested stakeholders should continue to follow the developments and voice their concerns to ensure that their interests are duly taken into account and that they can benefit from the improved market access conditions and trade-facilitative elements that are being discussed and agreed by regulators.

Accelerating the growth of Indonesia's electric vehicles market: New incentives to increase the production and purchase of electric vehicles

On 23 December 2023, the Government of Indonesia enacted *Minister of Investment/Head of Investment Coordinating Board Regulation No. 6 of 2023 on Guidelines and Governance for Providing Import and/or Delivery Incentives of Four-Wheeled Battery Electric Vehicles to Accelerate Investment* (hereinafter, BKPM Regulation 6/2023), which entered into force on 13 January 2024. To boost the adoption, investment, and production of electric vehicles in Indonesia, *BKPM Regulation 6/2023* regulates the conditions for importers or manufacturing companies to benefit from Indonesia's new incentives, namely a 0% import duty and the suspension of the sales tax on luxury goods for certain electric vehicles, including a requirement to comply with a minimum local content value. This article discusses Indonesia's existing incentives, highlights similar measures adopted by the US under the *Inflation Reduction Act* (hereinafter, IRA), and discusses the WTO consistency of such approaches.

The electric vehicles market in Indonesia

The market for electric vehicles has been increasing globally, as the sector is considered an important driver in reducing greenhouse gas emissions linked to the transportation sector. In Indonesia, the number of electric motorbikes has grown significantly from 17,198 units in 2022 to 62,409 units in 2023, while the number of electric cars increased by 43%, from 8,562 units in 2022 to 12,248 units in 2023, although, overall, these figures are still low in comparison with internal combustion engines. The adoption of electric vehicles is part of Indonesia's efforts to reduce air pollution from the use of fossil fuel-based transportation. As the world's leading producer of nickel, which is the primary raw material for the batteries used in electric vehicles, Indonesia is determined to become a global manufacturing hub for electric vehicles. Indonesia has also committed to develop the domestic ecosystem from upstream to downstream, with annual production targets of 600,000 units of electric cars and 2.45 million units of electric motorbikes by 2030.

Incentives to attain the ambitious objectives

According to experts, the further adoption of electric vehicles in Indonesia is currently hindered by the limited product choice on the market, coupled with a lack of a supporting legal framework to attract investors to build manufacturing facilities in the country. To address these shortcomings, the Government of Indonesia has started introducing various incentives.

Under *Minister of Finance (MOF) Regulation No. 8 of 2024 on Value Added Tax On Delivery Of Motor Vehicles Battery-Based Electricity For Certain Four Wheels And Vehicles Certain Bus Battery Based Electric Motors Government Borne Budget Year 2024*, for the period from

January to December 2024, the Government of Indonesia reduced the value-added tax (hereinafter, VAT) charged for the sale of electric cars from 11% to 1%, but this reduction is only available for electric cars that fulfil a minimum local content value of 40%. Under [MOF Regulation No. 9 of 2024 on Sales Tax On Luxury Goods Imported And/Or Delivery Of Taxable Goods That Are Classified Luxury In The Form Four Wheel Battery Based Electric Motor Vehicle Certain Particulars To Be Borne By The Government For The 2024 Budget Year](#), the Government of Indonesia exempts the sales tax on luxury goods for “Completely Built Up” (hereinafter, CBU) electric vehicles, which refers to electric vehicles fully assembled and ready for sale in the market, as well as for “Completely Knock Down” (hereinafter, CKD) electric vehicles, which refers to electric vehicles imported or produced in parts or components and assembled in Indonesia. Additionally, [MOF Regulation No. 10 of 2024 on the Amendment To Minister Of Finance Regulation Number 26/PMK.010/2022 on the Determination Of The Goods Classification System And Imposition Of Import Duty Tariffs On Imported Goods](#) suspends the import duty for certain electric vehicles, such as sedans.

In order to benefit from the suspension of the import duty and the tax on luxury goods, as provided by the relevant MOF regulations, companies, car importers or manufacturers must fulfil the criteria laid down in [BKPM Regulation 6/2023](#). Notably, importers of both “Completely Knock Down” and “Completely Built Up” vehicles or manufacturers must be a company that: 1) Commits to build a manufacturing facility for electric vehicles in Indonesia; and/or 2) Has invested in a manufacturing facility for cars with internal combustion engine vehicles and will later shift its production to electric vehicles; and/or 3) Has invested in a facility in Indonesia to introduce new electric vehicles products, either by boosting production plans or capacity. Importers or manufacturers must also commit to start producing electric vehicles in Indonesia between 2026 and 2027. To be eligible for the incentives, electric vehicles in “Completely Knock Down” conditions must have a local content value between 20 to 40%, while such requirement does not apply to “Completely Built Up” electric vehicles. To benefit from the incentives, companies must submit an application to the Ministry of Industry for verification through the [Online Single Submission System](#) by 1 March 2025.

The calculation methods for the local content value in electric vehicles are detailed in [Minister of Industry Regulation No. 6 of 2022 on Specifications, Development Roadmap, and Provisions for Calculating Domestic Component Level Values for Battery Electric Motorized Vehicles](#) and cover the following aspects: 1) The components of electric vehicles, such as body, cabin, chassis, battery, and electric motor drive systems; 2) The manufacturing, which includes labour, machine, and processing; 3) The assembly of electric vehicles; and 4) Research and development.

Incentives for electric vehicles and the US Inflation Reduction Act

In order to address existing cost barriers and encourage more widespread adoption of electric vehicles, many Governments have introduced fiscal incentives or subsidy schemes for the purchase or manufacturing of electric vehicles, including tax deductions and tax credits. Since 2009, China, for instance, has introduced various incentives for the electric vehicles industry, including VAT reductions for the purchase of electric vehicles. Within the ASEAN region, the Philippines has introduced a 0% import duty for electric cars, and, similar to Indonesia, Thailand has adopted a reduction of import duties and excise tax for the import of “Completely Built Up” electric cars and motorbikes.

The *Clean Vehicle Tax Credits* under the United States’ *IRA* have been particularly controversial, as the USD 3,750 tax credit is only available if a certain percentage of the vehicle’s battery components have been manufactured or assembled in North America (*i.e.*, in the US, Canada, or Mexico) (*i.e.*, the battery requirement). An additional USD 3,750 tax credit is available if the minerals necessary for the vehicle battery, such as nickel, aluminium, and lithium, have been extracted or processed in the US or in a country that has concluded a preferential trade agreement with the US, or have been recycled in North America (*i.e.*, the critical minerals requirement). To obtain either or both of the tax credits, the vehicles’ final assembly must have been carried out in North America (*i.e.*, the North America assembly

requirement). Various US trading partners have raised concerns regarding the trade impact of the *IRA*, as well as regarding the consistency of certain provisions with WTO rules.

WTO-consistent incentives?

In general terms, financial incentives or subsidies that are conditional upon the use of certain domestic inputs may be inconsistent with the non-discrimination principles contained in the *General Agreement on Tariffs and Trade 1994* (hereinafter, *GATT 1994*), the *Agreement on Trade-Related Investment Measures* (hereinafter, *TRIMs Agreement*), and with the provisions on prohibited subsidies of the *Agreement on Subsidies and Countervailing Measures* (hereinafter, *SCM Agreement*). On 26 March 2024, China submitted a request for WTO consultations with the US regarding several aspects of the *IRA*, including the *Clean Vehicle Tax Credit*. China argues that the battery, the critical minerals, and the North American assembly requirements, either separately or in any combination, violate: 1) The most-favoured nation principle contained in Article I:1 of the *GATT 1994* by granting advantages only to certain WTO Members; 2) The national treatment principle under Article III:4 of the *GATT 1994* by restricting the eligibility for the tax credit when it comes to vehicles with critical minerals and battery components supplied by foreign entities; and 3) Articles 3.1(b) and 3.2 of the *SCM Agreement* by creating a subsidy contingent upon the use of domestic over imported goods.

The US *IRA* and Indonesia's incentives are similar in the sense that they are both linked to local content requirements. Unlike the *IRA*, which essentially reserves the subsidies for electric vehicles or components that are produced domestically, or in certain third countries with which the US has concluded preferential trade agreements, *BKPM Regulation 6/2023* still allows imported "Completely Built Up" electric vehicles to benefit from the incentives. However, a questionable element remains, as the eligibility is contingent upon the commitments by the relevant companies to build production facilities in Indonesia and produce electric vehicles with the local content value required by the legislation. Indonesia's incentives would need to be reviewed for consistency vis-à-vis Article III:4 of the *GATT 1994*, as the local content value discriminates between domestic and imported 'like' electric vehicle components, while the measure requiring businesses to invest in the electric vehicles sector may be inconsistent with Article 2 of the *TRIMs Agreement*, which prohibits WTO Members to apply a trade-related investment measure "that is inconsistent with the provisions of Article III or Article XI of *GATT 1994*". Additionally, paragraph 1(a) of the Annex to the *TRIMs Agreement*, which provides an indicative list of measures that are inconsistent with the obligation of national treatment, includes the imposition of domestic laws that require companies to purchase or use products of domestic origin or source, including through local content requirements. Indonesia's incentives could also be considered prohibited subsidies under Article 3.1(a) of the *SCM Agreement*, noting that the eligibility for the incentives is linked to the use of domestic components for electric vehicles.

A 'protectionist' approach to support the domestic electric vehicle industry?

The Government of Indonesia's new incentives received positive feedback from the domestic industry and experts, noting that such incentives would succeed in increasing domestic production and the adoption of electric vehicles. According to the Country Director of the *Tony Blair Institute Indonesia*, *Shuhaela Haqin*, the incentives by the Government create "an attractive investment scheme for producers", which would give producers the chance to build manufacturing facilities in Indonesia and build market share for electric vehicles in Indonesia. However, the conditions linked to the granting of the incentives, namely the local content value and production requirements, could violate the WTO's non-discrimination principles, especially as such conditions discriminate against imports of certain electric vehicle components in favour of their domestic counterparts. Such approach is, however and unfortunately, not novel when it comes to Indonesia's trade policies. Over the past years, the Government of Indonesia has developed various local content requirements in various sectors, such as pharmaceutical and telecommunications, which have been scrutinised by WTO Members due to the measures' perceived protectionist nature.

In order to develop local production and accelerate the adoption of electric vehicles, Indonesia could explore other measures that would be similarly effective and yet consistent with WTO rules. Notably, the Government of Indonesia could look into lowering tariffs and addressing non-tariff measures to facilitate imports, and access to technologies or to necessary inputs for electric vehicle production, which are currently not locally manufactured. It remains to be seen whether Indonesia's new incentives would indeed succeed in supporting the adoption and development of electric vehicles in the country and how trading partners will react to the new schemes.

WTO Members again raise concerns regarding the EU's lowering of the maximum residue levels (MRLs) for an active substance used in pesticides

From 20 to 22 March 2024, the World Trade Organization's (hereinafter, WTO) Committee on Sanitary and Phytosanitary (hereinafter, SPS) Measures held its most recent meeting. At the meeting, the US reiterated its and other WTO Members' concerns regarding the EU's approach to the setting of maximum residue levels (hereinafter, MRLs) for pesticides and active substances. More specifically, the US contests the EU's practice of setting exceptionally low MRLs, even below the default Limit of Determination (hereinafter, LOD), which is considered as the standard detection limit, arguing that this creates unnecessary barriers to trade. The remarks were triggered by the EU's lowering of the MRLs for *Oxamyl*, an active substance that has been widely used in the past under the brand name product *Vydate*, a pesticide that contains *Oxamyl* as its main active ingredient, through [Commission Regulation \(EU\) 2024/331 of 19 January 2024 amending Annexes II and V to Regulation \(EC\) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for oxamyl in or on certain products](#). This article provides an overview of the controversy surrounding MRLs for active substances and discusses how the recent exchanges are reviving a broader discussion on the appropriate regulatory approach.

Different approaches to set Residue Levels

Under EU law, MRLs are defined by [Regulation \(EC\) No 396/2005 of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC](#) as the “upper legal level of a concentration for a pesticide residue in or on food or feed set in accordance with [Regulation (EC) No 396/2005], based on good agricultural practice and the lowest consumer exposure necessary to protect vulnerable consumers”. MRLs provide the highest legal limit for the amount of an active substance that may be present in a particular agricultural commodity, as set in the Annexes to [Regulation \(EC\) No 396/2005](#).

[Regulation \(EC\) No 396/2005](#) defines the LOD as “the validated lowest residue concentration which can be quantified and reported by routine monitoring with validated control methods”. In simple terms, the LOD refers to the smallest amount of an active substance that a test can accurately measure and under which it is presumed that an active substance has not been used or that its use cannot simply be detected. [Regulation \(EC\) No 396/2005](#) sets the default limit at 0,01 mg/kg, which is the general technical limit that applies by default to most agricultural commodities. However, specific analytical methods for each active substance can achieve a lower LOD if it is validated for accuracy. Based on [Regulation \(EC\) No 396/2005](#), the EU maintains a system for ongoing monitoring and adjustment of MRLs and LODs, updating them as deemed necessary and appropriate (see [Trade Perspectives, Issue No. 3 of 8 February 2019](#)).

The new MRLs for Oxamyl and their trade impact

On 28 June 2023, the European Commission (hereinafter, Commission) had submitted a [notification](#) to the WTO concerning its Proposal to amend Annexes II and V to [Regulation \(EC\) No 396/2005](#) to lower the MRLs for *Oxamyl* in certain food commodities, such as citrus fruits

or stone fruits. Only products complying with the revised MRLs may be placed on the EU market. *Oxamyl* is an active substance used mainly against insects and roundworms and has been widely used in pesticides (e.g., *Vydate*) for a variety of crops, including fruits, vegetables, and some field crops like soya beans. In recent times, the use of *Oxamyl* has been increasingly restricted by regulators. For instance, in the US, only its liquid form, not its granulated form, is permitted under certain conditions.

With respect to the amendment of the MRLs for *Oxamyl*, the Commission notes that the approval of *Oxamyl* for use as an active substance in the EU had expired on 1 May 2023 and that, following the European Food Safety Authority's (hereinafter, EFSA) *evaluation*, the Commission had adopted [Commission Implementing Regulation \(EU\) 2023/741 of 5 April 2023 concerning the non-renewal of the approval of the active substance oxamyl](#). This decision was based on the EFSA's evaluation, which had identified “*unacceptable chronic exposure risks for a wide range of diets, as well as acute exposure risks for a wide range of commodities*”, finding that the MRLs for *Oxamyl* “*should be set at the respective limits of determination*”. Moreover, the EFSA identified that the default LOD of 0.01 mg/kg for *Oxamyl* was not sufficiently protective for consumers. In light of these findings, the EU notified WTO Members of its intention to lower the LODs and MRLs for *Oxamyl* in most commodities below the default limit of 0.01 mg/kg, namely to levels ranging from 0.001 mg/kg (for example for oranges) to 0.005 mg/kg (for example for avocados) for the respective products.

The notification allowed WTO Members to submit comments until 27 August 2023. The EU's notification led to reactions from other WTO Members, including Colombia, Costa Rica, and the US, which voiced their concerns regarding the EU's lowered MRLs for *Oxamyl* and the EU's broader approach to MRLs and pesticide regulation. During the meeting of the WTO SPS Committee in July 2023, the US and other WTO Members had criticised the EU's approach to pesticide regulation and the setting of overly strict MRLs based on uncertainty, rather than on a proper risk assessment, underlining that the EU failed to consider the least trade-disruptive measures, while harming global food security. WTO Members urged the EU to adopt a more scientific, risk-proportionate approach that aligns with international standards and takes account of the concerns of other WTO Members.

At the SPS Committee meetings in November 2023 and March 2024, the US and other WTO Members reiterated their concerns. In a statement issued at the March 2024 meeting, the US noted that the EU's recent MRL reductions were well below the EU's “*current, default limit of determination (LOQ) of 0.01 parts per million (ppm)*” and that the lowering of the MRLs for *Oxamyl* to levels ranging from 0.001 ppm to 0.005 ppm appeared “*to be more trade restrictive than necessary*”. The US also noted that the lowering of the MRLs would “*have unnecessary negative effects on agricultural trade and create trade disruptions due, in part, to inaccurate residue analytical results, cross-contamination, or other reasons outside of the control of producers or exporters*”.

WTO Members further requested the EU to enforce changes to the MRLs at the time of production, not of importation, defending “*the need for lawfully produced food products to have sufficient time to move through the channels of trade before they are subject to the enforcement of standards established after their production*”, something considered especially relevant for “*products with long shelf lives*”. Despite the concerns raised by WTO Members, on 19 January 2024, the EU adopted [Commission Regulation \(EU\) 2024/331 amending Annexes II and V to Regulation \(EC\) No 396/2005](#). The changes will apply from 11 May 2024, without any transitional provisions.

The clash of different regulatory approaches

The concerns put forth by the US and other WTO Members are linked to the core principles of the WTO SPS Agreement. Under Article 2.2 of the SPS Agreement, WTO Members are to “*ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence*”. In addition, Article 5.6 of the SPS Agreement

states that, “when establishing or maintaining sanitary or phytosanitary measures”, WTO Members are to “ensure that such measures are not more trade-restrictive than required”.

Therefore, WTO Members have a fourfold duty when applying SPS measures, as these measures must be: 1) Necessary; 2) Proportionate; 3) Based on scientific principles; and 4) Not maintained without sufficient scientific evidence. In this regard, the US contests that the EU’s recent measure regarding *Oxamyl* “is not necessary to meet the EU level of protection”, that it is based on “uncertainty and insufficient scientific evidence”, and that it would have negative consequences on agricultural trade, due to “inaccurate residue analytical results, cross-contamination, or other reasons outside of the control of producers or exporters” and other factors, such as the enforcement of changes to MRLs at the moment of importation into the EU, not of production.

The EU justifies the modification of the MRLs for *Oxamyl* with the non-renewal of its approval in the EU and the identified risks by the EFSA. Whenever the EFSA assesses or reassesses an active substance within its mandate, the Commission is required to consider these conclusions. In the case of *Oxamyl*, following the EFSA’s recommendation for a non-renewal of the approval, the Commission requested a further risk assessment of existing MRLs for *Oxamyl*. Based on the EFSA’s findings indicating unacceptable risks, the Commission proposed lowering the MRLs and LODs for *Oxamyl*. The EU would likely argue that stricter MRLs are necessary to address potential long-term health risks associated with low-level, chronic pesticide exposure and that its MRLs are, therefore, in compliance with the conditions under the SPS Agreement. The EU might further argue that alternative and transitional measures, such as maintaining the default LOD for *Oxamyl* or enforcing the MRLs at the time of production rather than importation, would not be as effective in safeguarding public health.

The stricter MRLs introduced by the EU revive the longstanding debate opposing the EU’s hazard-based approach, informed by the precautionary principle, and the risk-based approach pursued by other WTO Members. The EU’s hazard-based approach prioritises consumer protection in case there is incomplete scientific data. This approach is based on Article 191 of the Treaty on the Functioning of the EU (TFEU), which allows preventive measures when there is a potential risk of harm to human health or the environment, even if the scientific evidence about the exact nature or extent of the risk is incomplete or inconclusive. While Article 5.7 of the SPS Agreement allows measures to address “potential risks”, as long as these measures remain “provisional”, it also imposes a duty on the WTO Member to “seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time”. WTO Members advocating for a risk-based approach argue that stricter MRLs, without a demonstrated significant risk reduction, could be a violation of Articles 2.2 and 5.6 of the SPS Agreement, and question the proportionality and necessity of such approach.

Beyond the health concerns that sustain the EU’s action and the questions of WTO-consistency, the new EU MRLs and LDOs for *Oxamyl* will likely have significant commercial implications. Although increasingly restricted, *Oxamyl* is still approved and in use in several countries, including in the US, for certain crops, such as soya beans, fruits, and vegetables. Trade in such products may be significantly affected, including due to the technical limitations of current testing methods. At a more general level, the diverging MRLs highlight the need for a more collaborative approach to pesticide regulation, particularly within the *Codex Alimentarius*, ensuring both consumer protection and food safety, as well as reasonable trade regulation and facilitation.

A long-simmering State dispute with exporters caught in the crossfire

The recent controversy surrounding the EU’s MRLs for *Oxamyl* highlights the longstanding debate between the EU’s hazard-based approach and a more risk-based one, and the struggle to find a balance between the requirements of food safety and those of international trade. Exporters of affected products from around the world will need to take account of the new MRLs in the EU and ensure that their products comply with the new EU rules. In case of

persisting concerns with respect to the EU's approach to MRLs and where significant trade impacts occur, EU trading partners may want to consider raising this issue in the available *fora*, at the WTO or under the applicable preferential trade agreements.

Recently adopted EU legislation

Trade Law

- *Council Decision (EU) 2024/1102 of 25 March 2024 on the position to be taken on behalf of the European Union within the EU-UK Specialised Committee on Energy established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, regarding the adoption of the guidance on working arrangements and on administrative arrangements*
- *Council Decision (EU) 2024/1156 of 12 April 2024 on the conclusion of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other*

Customs

- *Commission Delegated Regulation (EU) 2024/1072 of 25 January 2024 amending Delegated Regulation (EU) 2015/2446 as regards decisions relating to binding information in the field of customs valuation and decisions relating to binding origin information*

Food Law

- *Commission Regulation (EU) 2024/1022 of 8 April 2024 amending Regulation (EU) 2023/915 as regards maximum levels of deoxynivalenol in food*
- *Commission Implementing Regulation (EU) 2024/1023 of 8 April 2024 amending Implementing Regulation (EU) 2017/2470 as regards the conditions of use of the novel food lactitol*
- *Commission Implementing Regulation (EU) 2024/1026 of 8 April 2024 amending Implementing Regulation (EU) 2017/2470 as regards the specifications of the novel food astaxanthin-rich oleoresin from *Haematococcus pluvialis* algae*
- *Commission Implementing Regulation (EU) 2024/1027 of 8 April 2024 amending Implementing Regulation (EU) 2017/2470 as regards the specifications of the novel food galacto-oligosaccharide*
- *Commission Implementing Regulation (EU) 2024/1052 of 10 April 2024 authorising the placing on the market of calcidiol monohydrate as a novel food and amending Implementing Regulation (EU) 2017/2470*
- *Commission Regulation (EU) 2024/1077 of 15 April 2024 amending Annex II to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 2,4-DB, iodosulfuron-methyl, mesotrione and pyraflufen-ethyl in or on certain products*

- *Commission Regulation (EU) 2024/1078 of 15 April 2024 amending Annexes II and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for azoxystrobin, flonicamid, isofetamid, mefentrifluconazole, metazachlor, pyrimethanil and quartz sand in or on certain products*

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