FRATINIVERGANO
EUROPEAN LAWYERS
TRADE PERSPECTIVES©

Issue No. 15 of 29 July 2024

- **EU-Algeria trade dispute: legal challenge over alleged market access restrictions**
- **Safeguarding domestic industries: Indonesia plans to introduce additional import duties on several products, including carpets, textiles, and ceramics**
- **France's *Origin'Info*: a voluntary label on processed foods to enhance food origin transparency**
- **Recently adopted EU legislation**

Note to Subscribers

Dear Friends and Readers of Trade Perspectives©,
Please note that Trade Perspectives© will take an editorial break during the WTO's August recess and will resume its fortnightly publication schedule on 9 September 2024. We thank you for your continued interest in Trade Perspectives© and look forward to starting again with renewed energy and enthusiasm our dialogues on international trade and food law as of this Autumn.

The Trade Perspectives© Team

EU-Algeria trade dispute: legal challenge over alleged market access restrictions

On 14 June 2024, the European Commission (hereinafter, Commission) submitted a *Note Verbale* to the EU-Algeria Association Council launching a dispute settlement case against Algeria under Article 100(4) of the EU-Algeria Association Agreement. The EU claims that Algeria has breached the terms of the Association Agreement by imposing a series of trade-restrictive measures since 2021, concerning various areas of trade, such as car manufacturing, marble and ceramics imports, foreign ownership of companies, as well as administrative changes hampering the efficiency of companies involved in imports into Algeria. This article analyses the dispute settlement procedure under the Association Agreement and, more generally, the ways in which EU businesses can respond to trade barriers imposed by third countries.

Declining trade and rising tensions: the EU-Algeria Association Agreement under strain

On 12 April 2002, the EU and Algeria signed an Association Agreement, which came into force on 1 September 2005. The Association Agreement established a framework for mutual trade and political ties, notably through provisions that aim to liberalise trade in goods, services, and capital between the two parties.

Despite the ambition under the Association Agreement to enhance and facilitate trade, bilateral trade between the EU and Algeria has faced a decline in recent years, from EUR 22.3 billion in 2015 to EUR 14.9 billion in 2023. This significant decline sparked concern in the EU and may have been a factor in the launch of several dispute settlement proceedings. The cause of this significant decline can, according to the EU, be found in the various trade-restrictive measures that the EU alleges Algeria has imposed. The EU's *Access2Markets* website currently lists 12 active trade-restrictive measures maintained by Algeria. Since Algeria is not a Member of the World Trade Organization (hereinafter, WTO), Algeria is not subject to any WTO obligations and to WTO dispute settlement, leaving the EU with the only option to trigger dispute settlement under Article 100 of the Association Agreement.

Recurrent disputes: the EU's ongoing challenges of Algerian trade measures

This recent launch of dispute settlement proceedings is not the first time that the EU has brought a dispute against Algeria under Article 100 of the Association Agreement. In 2020, following the imposition of certain trade measures between 2015 and 2019, the EU had already submitted a *Note Verbale* to the Association Council, bringing a dispute settlement case against Algeria and asking for arbitration. In this *Note Verbale*, the EU had set out the alleged trade-restrictive measures imposed by Algeria, from 2015 to 2019, including measures against car imports, telecommunications trade, and the increase of certain Customs duties.

According to the EU's overview of active dispute settlement cases of 6 November 2023, this arbitration case was only partially successful. The report states that, "*On 29 December 2022, Algeria withdrew the additional import duties (DAPS) for all products covered by the Association Agreement between the EU and Algeria*" and that, "*in November 2022, Algeria modified the legal framework on the importation of cars by which it removed the car import ban*". At the same time, the Commission noted, in its overview of dispute settlement cases, that "*Algeria maintained several other significant incompatibilities with the Association Agreement, while also introducing new ones. The Commission is thus closely monitoring the situation*".

Specific measures under scrutiny: The EU's concerns over trade barriers in Algeria

It is these newly introduced measures, considered as "*incompatibilities with the Association Agreement*" by the Commission, that led the EU to submit the recent *Note Verbale* to the Association Council, which provides details on eight trade-related measures that the EU considers incompatible with the Association Agreement. In the *Note Verbale* of 14 June 2024, the EU requests urgent consultations with Algeria in order to resolve these issues and, if this were to prove unsuccessful, the EU asks for the creation of another arbitration panel.

The *Note Verbale* lists eight concerns and measures imposed by Algeria, namely: 1) The requirement of a new banking certificate for each import transaction for importing companies; 2) A technical ban on imports of marble and ceramic products; 3) A local content requirement for vehicle manufacturing; 4) A requirement of re-registration with banks for importing companies; 5) A 51% local ownership requirement for importing companies; 6) The refusal to apply preferential tariffs for in-quota EU agricultural products; 7) Banking restrictions on trade with Spain; and 8) An overall restrictive trade and economic policy.

One measure highlighted in the *Note Verbale* is Algeria's *Executive Decree No. 21-94* of 9 March 2021, which stipulates that companies importing goods into Algeria must re-register their company with Algeria's *National Commerce Register*. The EU considers this a barrier to trade, as companies may only register with one sub-group of import activity. This means that companies wishing to export multiple types of goods must divide their companies into smaller entities, each registering on its own, in order to continue importing goods in Algeria.

The EU considers this to be inconsistent with Article 37(1) of the Association Agreement, which states that, the Parties must "*avoid taking any measures or actions which render the conditions for the establishment and operation of each other's companies more restrictive than the*

situation existing on the day preceding the date of signature of this Agreement". The EU argues that, by imposing this measure, Algeria has made the administration of these companies much more complicated than it was before the measure was introduced. Although this measure applies to companies in Algeria, it also restricts EU businesses wishing to establish themselves in Algeria, as detailed in the EU's *Note Verbale*.

Furthermore, the EU considers that the costs associated with re-registering a business with Algeria's *National Commerce Register* can be seen as a measure having equivalent effect to a quantitative restriction, as such payment requirements did not exist before the measure was introduced and is a requirement for companies wishing to import goods into Algeria. In the *Note Verbale*, the EU states that such obligation is contrary to Article 17(2) of the Association Agree, which provides that "*No new quantitative restriction on imports or exports or measure having equivalent effect shall be introduced in trade between the Community and Algeria*", because it increases the costs of importing goods into Algeria. The EU further considers that the measure is incompatible with Article 37(1) of the Association Agreement because it renders the conditions for the establishment of EU companies in Algeria more restrictive than they were on the day preceding the date of signature of the Association Agreement.

Another trade-restrictive measure highlighted in the *Note Verbale* is Algeria's technical ban on the imports of "*marble and ceramic products in their final form*". In *Letter No. 116/M.C./SG/2024* of 15 January 2024 sent to the Algerian banking association (*i.e.*, *l'Association Professionelle des Banques et Établissements Financiers*, ABEF), Algeria's Minister of Commerce ordered banks established in Algeria to refuse domiciliation requests for transfers linked to the importation of marble and ceramics in their final form. The EU argues that this is contrary to Article 17(2) of the Association Agreement, as it prevents the transfer of money linked to imports of such goods and effectively renders trade in these goods practically impossible. The EU argues that this would constitute a measure having equivalent effect to a quantitative restriction on imports into Algeria from the EU, as prohibited by Article 17(2) of the Association Agreement.

Industry reactions and EU mechanisms: VDMA and the *Single Entry Point*

Bilateral trade between the EU and Algeria appears to have been severely affected by the measures imposed in recent years. The most impact appears to be felt by Spain, with certain measures even specifically targeting its products or services, such as the banking restrictions. Furthermore, the technical ban on ceramics also adversely affects Spain and has led to a sharp decrease in related trade. More specifically, in 2014, ceramics exports from Spain to Algeria represented 4.8% of Spain's total exports to Algeria, corresponding to a value of USD 203 million, but this dropped to 0.1% and USD 2.84 million in 2023. The ceramics industry in Castellón was hardest hit by the measures and reportedly put pressure on Spain and the EU to remedy the measures.

The German Engineering Federation (*Verband Deutscher Maschinen und Anlagenbau*, hereinafter, VDMA), which represents 3,600 machinery and equipment manufacturing businesses in Germany and Europe, recently published a statement supporting the EU's decision to launch dispute settlement proceedings against Algeria and flagging the issues of particular concern and importance to the machinery sector. The VDMA specifically refers to the banking certificate, as well as the local content requirements, as problematic.

The dispute settlement proceedings are the culmination of the EU's efforts to address the trade measures introduced by Algeria. As the decrease in trade shows, restrictive trade measures can have an important impact on trade and addressing them properly, either within the WTO or in the context of preferential trade agreements, can deliver important relief to traders. For the EU to act, it must be aware or be made aware of the issues being faced by importers and exporters on the ground.

The process to raise issues to the Commission has been significantly streamlined and simplified in recent years. In 2020, the EU established its *Single Entry Point* (hereinafter, SEP)

on the *Access2Markets* website, through which businesses can "*report to the Commission (alleged) barriers to market access or infringements of trade and sustainable development commitments*", which the Commission then assesses and, "*where justified*", follows up "*with the respective partner countries*". This allows the Commission to assess and investigate reports of trade barriers, and to take further action if required.

Next steps: Algeria's response and the EU's monitoring process

In the *Note Verbale*, the EU requests urgent consultations with Algeria in order to rectify the trade dispute. However, if Algeria were to refuse to engage in discussions, or if they were to prove unsuccessful in solving the dispute, the EU already asked for the establishment of an arbitration panel under Article 100(4) of the Association Agreement. If this were to be the case, then, within two months, both the EU and Algeria would need to put forward an arbitrator, and the Association Council would appoint a third arbitrator.

The arbitration panel will then need to review the case, taking a decision based on a majority vote. Once a decision has been delivered, Article 100(4) of the Association Agreement states that "*Each party to the dispute must take the steps required to implement the decision of the arbitrators*", suggesting that the arbitration panel's decision is binding. In case Algeria were to refuse to implement the decision of the arbitration panel, the EU would be entitled to take "*appropriate*" measures, such as sanctions, or the suspension of parts or all of the Association Agreement.

It is now for Algeria to respond to the EU's *Note Verbale* and engage in discussions with the EU about the alleged trade-restrictive measures it has imposed in recent years. Businesses should consider reporting perceived trade barriers through the SEP, which can be an important first step in what could become full-fledged dispute settlement proceedings, in order to hold countries responsible to their obligations under preferential trade agreements.

Safeguarding domestic industries: Indonesia plans to introduce additional import duties on several products, including carpets, textiles, and ceramics

On 6 July 2024, Indonesia's Minister of Trade, *Zulkifli Hasan*, announced that, in order to protect the domestic industry, the Government of Indonesia planned to impose anti-dumping and safeguard duties of up to 200% on seven commodities, namely textiles and textile products, ready-made clothing, ceramics, electronic devices, beauty products, ready-made textile goods, and footwear.

With particular regard to ceramics, the Government of Indonesia is discussing the possible implementation of anti-dumping duties on imports from China. On 15 July 2024, the *Indonesian Trade Safeguards Committee* announced that the Government of Indonesia would impose safeguard duties on imports of carpet and textiles in the coming weeks. This article provides an overview of the World Trade Organization's (hereinafter, WTO) rules and Indonesia's legal framework on trade remedies, and discusses the Government of Indonesia's proposed measures, along with the relevant commercial implications.

WTO rules governing anti-dumping and safeguard measures

Trade remedies, such as anti-dumping, safeguards, and countervailing measures, are trade policy instruments that enable governments to take remedial action against imports that are causing injury to domestic industries. For Members of the World Trade Organization (hereinafter, WTO), trade remedies are governed by three separate WTO agreements, namely the *Anti-Dumping Agreement*, the *Agreement on Safeguards*, and the *Agreement on Subsidies and Countervailing Measures*. These agreements and certain provisions of the *General Agreement on Tariffs and Trade 1994* (hereinafter, GATT 1994) set out the substantive and

procedural rules governing the application of trade remedies that WTO Members must adhere to.

A safeguard measure, which may be in the form of tariff-rate quotas or increased tariffs, is a temporary import restriction that a WTO Member may adopt where a surge of unforeseen imports causes or threatens to cause serious injury to a domestic industry. In accordance with the *Safeguards Agreement*, the application of a safeguard measure must not exceed four years, unless extended, to a total maximum of eight years, and must be applied to all imports irrespective of the country of origin.

An anti-dumping measure refers to a remedy that may be applied by a WTO Member against an imported product being "*dumped*" and causing material injury to a domestic industry. The *Anti-Dumping Agreement* states that a product is considered "*dumped*" where its export price is lower than the normal value, namely the price at which that product is sold on the domestic market of the exporting country. Anti-dumping measures may normally apply for a maximum of five years, unless an investigation concludes that the expiry of the duty would likely lead to a continuation or recurrence of dumping and injury. In contrast to safeguard measures, anti-dumping measures must cover specific goods originating in, or exported from, specific countries or exporters.

A countervailing measure refers to a unilateral import duty that may be imposed by a WTO Member against subsidised imports that cause injury to a domestic industry. A "*subsidy*" is deemed to exist when there is a financial contribution provided by a Government or a public body within the territory of a WTO Member that confers a benefit. The *Agreement on Subsidies and Countervailing Measures* requires that a countervailing measure be terminated after five years, unless it is determined that maintaining such a measure is necessary to prevent the continuation or recurrence of subsidisation and injury.

Indonesia's legal framework governing trade remedies

In Indonesia, *Government Regulation No. 34 of 2011 concerning Anti-dumping Measures, Countervailing Measures and Safeguard Measures* provides the legal framework governing such trade remedies. According to Article 3 and Article 71 of *Government Regulation No. 34/2011*, respectively, anti-dumping duties may only be imposed following an investigation carried out by the *Indonesian Anti-Dumping Committee*, while safeguard measures may only be imposed following an investigation by the *Indonesian Trade Safeguards Committee*. Indonesia regularly implements trade remedies to protect its domestic industries.

From 1996 to 2024, Indonesia initiated 154 anti-dumping investigations and implemented 65 anti-dumping duties. From 1996 to 2022, Indonesia initiated 38 safeguard investigations and implemented 24 safeguard measures.

Anti-dumping duties on imports of ceramics from China

Since the outbreak of the *Covid-19* pandemic in 2020, imports into Indonesia of products originating in China, including ceramics, appear to have significantly increased. More specifically, in 2019, imports of ceramics from China had a total value of USD 187 million, while in recent years, imports significantly increased, namely to USD 265 million in 2022 and to USD 267 million in 2023. At the same time, imports from other countries, such as India, significantly decreased from USD 61 million in 2019 to USD 30 million in 2023. On 28 June 2024, Minister *Zulkifli Hasan* announced that the Government of Indonesia was preparing the necessary legislation to impose anti-dumping duties of up to 199% on imports of ceramics from China.

The anti-dumping investigation was initiated on 15 March 2023 and concluded on 2 July 2024. The report found that there are dumped imports of ceramics from China that cause material injury to the domestic industry, and that there was a causal link between the dumped imports and the injury. According to the Chairman of the *Indonesian Anti-Dumping Committee*, *Danang Prasta Danial*, the outcome of the investigation was currently being reviewed by Minister *Zulkifli*

Hasan. Reportedly, the rate of such anti-dumping duties for ceramics would be set at between 100.12% and 155% for companies that cooperated with the investigation, and at 199% for non-cooperative companies.

The proposed anti-dumping duties have garnered criticism from various stakeholders in Indonesia. Notably, the *Institute for Development of Economics and Finance* stated that the imposition of anti-dumping duties, including for ceramics, might not strengthen the domestic industry and, instead, might cause imports to shift to other trading partners rather than decrease. Anti-dumping duties on ceramics from China could lead to increased imports from India and Viet Nam, which are the top exporters of ceramics to Indonesia after China. Furthermore, the *Institute for Development of Economics and Finance* also highlighted that the duties would apply to all types of ceramics, despite the fact that Indonesia's production of porcelain ceramic was not yet sufficiently developed to fulfil domestic demand. The *Institute* further added that the proposed duties could lead to increased domestic prices of ceramics and spark retaliatory measures by China.

It should also be noted that also other trading partners are taking action against ceramic imports from China. Notably, on 13 February 2024, the European Commission adopted *Commission Implementing Regulation (EU) 2024/493 of 12 February 2024 imposing a definitive anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China following an expiry review*, which renews EU anti-dumping measures on imports of Chinese ceramic wall and floor tiles for an additional five years, namely until 2029.

Efforts to protect domestic industries

On 6 July 2024, Minister *Zulkifli Hasan* stated that, in addition to ceramics, the Government of Indonesia would impose both anti-dumping and safeguard duties of up to 200% on textiles, ready-made garments, accessories, electronics, footwear, and cosmetics. The exact date for the implementation of these anti-dumping and safeguard duties has yet to be confirmed.

At a press conference held by Indonesia's Ministry of Trade on 15 July 2024, it was announced that the *Indonesian Trade Safeguard Committee* was also investigating imports of several other products, including cotton thread, artificial filament thread, and cotton woven fabric. At the same time, the *Indonesian Anti-Dumping Committee* is investigating imports of, *inter alia*, synthetic filament yarn, ceramic tiles, nylon film, and polyethylene terephthalate (PET). Both investigations are expected to be concluded by September/October 2024.

Following a separate investigation, on 15 July 2024, the Chair of the *Indonesian Trade Safeguards Committee*, *Franciska Simanjuntak*, announced that the Government of Indonesia would impose safeguard duties on imports of carpets and textiles in the coming weeks. The duties would be implemented through a forthcoming Minister of Finance Regulation, which is currently being finalised. For carpets, the safeguard measure would be an extension of the previous *Minister of Finance Regulation No. 10/PMK.010/2021 of 2021 concerning Imposition of Import Duty on Safeguard Measures on Imports of Carpet and Other Floor Covering Textile Products*.

Ensuring the WTO-consistency of Indonesia's trade remedies

For WTO Members, trade remedies are only permitted if they are applied in accordance with the rules set in the relevant WTO agreements. Failure to adhere to either the substantive or procedural requirements could lead to the measures being challenged by trading partners under the WTO dispute settlement mechanism and could also lead to a sustained cycle of '*tit-for-tat*' trade measures that may negatively impact broader economic relations (see *Trade Perspectives*, Issue No. 13 of 1 July 2024). In response to the Government of Indonesia's plan to impose additional duties on imports of several products, including those from China, on 11 July 2024, a spokesperson for China's Foreign Ministry stated that China would closely follow the relevant developments and "*take necessary measures to safeguard the legitimate rights and interests of Chinese companies*".

The General Chair of the *Indonesian Building Materials Suppliers Forum*, *Antonius Tan* claimed that the proposed anti-dumping duty on Chinese imports was inconsistent with the WTO *Anti-Dumping Agreement*. Article 5 thereof states that an investigation to determine any alleged dumping must be initiated upon a written application by or on behalf of the "*domestic industry*", which refers to domestic producers "*whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application*". General Chair *Tan* highlighted that the investigation had been requested by three companies that represented only 26% of Indonesia's total production of ceramics. The investigation report published by the *Anti-Dumping Committee*, however, states that the applications had gained support by other stakeholders representing 74% of Indonesia's total ceramics production

Anticipating the forthcoming regulations

Trade remedies can be considered as an effective tool to protect a WTO Member's domestic industry from a surge of imports or from dumped imports. While Indonesia has the right to impose trade remedies to protect its domestic industry in the cases foreseen in the relevant WTO agreements, the Government of Indonesia must ensure that such measures do not respond to a "*protectionist*" agenda aimed at reducing competition by imported goods. Therefore, when conducting an investigation and when implementing the measures, the Government of Indonesia must adhere to the WTO rules and should actively engage with its trading partners, so as to avoid potential disputes and countermeasures, which would inevitably affect its broader economic interests.

Additionally, the investigations and the measures being considered by the Government of Indonesia should take into account the market conditions for the relevant products, notably to ensure that the imposition of anti-dumping and safeguard measures does not disrupt the supply chains of domestic industries, nor significantly increase prices for consumers and businesses that rely on imported products. Relevant stakeholders, including major exporters of the commodities under consideration, should monitor the forthcoming regulations and play an active role.

France's *Origin'Info*: a voluntary label on processed foods to enhance food origin transparency

On 8 July 2024, France's Ministry of Economy launched a new voluntary label for processed foods named *Origin'Info*. The initiative aims at enhancing transparency around the origin of agricultural ingredients in processed foods. Developed collaboratively by France's Government, manufacturers, distributors, and consumer protection associations, *Origin'Info* was officially presented on 24 May 2024, alongside a graphic charter and a logo. By 20 June 2024, 116 brands had already joined the initiative, representing more than 10,000 products expected to display the new logo by the end of 2024.

According to a statement by France's Ministry of Economy, "*In order to improve information on the origin of food products, a new Origin'info logo will be affixed to the products of several dozen brands from this summer. This logo concerns foodstuffs not subject to an obligation to indicate origin and is at the initiative of the brands*". This article provides a short background on the inception of the *Origin'Info* initiative, an overview of the graphic charter and specifications the participating brands need to adhere to, as well as an outline of how this initiative interacts with or supplements the EU's food labelling legislation.

The *Origin'Info* and the relevant product specifications

In September 2021, an opinion issued by the French National Consumer Council (*Conseil national de la consummation*, CNC) recommended strengthening voluntary systems for indicating the origin of food products, so that it is clearer and more understandable for

consumers, without misleading them. The CNC is a joint advisory body attached to France's Ministry for Consumer Affairs, made up of members of Government agencies, representatives from business associations (*e.g.*, manufacturers and distributors), and consumer associations.

The *Origin'Info* initiative was launched with product specifications (*i.e.*, the *cahier des charges "Origin'Info"*) to which participating brands must adhere, notably including a harmonised format for the voluntary display of the origin of the agricultural raw material of the ingredients of processed foodstuffs. These specifications are part of a voluntary process of informing consumers about the origin of agricultural, fishery, and aquaculture raw materials of food ingredients in pre-packaged processed foodstuffs intended for distribution to the final consumer, such as frozen pizza, ready-made lasagna, or fruit yoghurt. *Origin'Info* is open to "*any manufacturer of products sold under its own brand or, in the case of products sold under a private label, to distribution brands that have their brand manufactured, regardless of their nationality or the places where these products are manufactured or assembled*".

Brands participating in the *Origin'Info* initiative retain the possibility of withdrawing from it at any time, provided that they no longer use the logo. Participating brands must commit to effectively implement the provisions of the specifications (such as product labelling and the optional activation of a QR code with the information on the origin). In practice, under this initiative, a black or blue logo will be displayed on the package of processed food products informing about "*the origin of the agricultural raw material of the primary ingredients of processed foodstuffs*".

The origin is determined on the basis of *Recommendation No. 1* contained in an Opinion issued by the CNC on 20 September 2021, according to which the indication of a maximum of three primary ingredients is permitted on the label, notably: 1) Primary ingredients, which represent more than 50% of the final food; 2) Ingredients, which are characteristic for a food (such as milk in yoghurt, cacao in chocolate, flour and tomato sauce in pizza); and 3) Ingredients mentioned in the denomination of food, in the order of the ingredient list, but excluding ingredients used in a small doses for flavouring purposes. Other recommendations by the CNC concern the indication of multiple origins (with indications such as "*EU*" or "*Non-EU*", etc.) and the mandatory indication of meat as an ingredient under France's *Decree No. 2020-363* of 27 March 2020 on the indication of the origin of milk and milk and meat used as an ingredient (regarding an earlier version of the Decree, see *Trade Perspectives*, Issue No. 14 of 15 July 2016). The CNC also recommends to avoid ambiguities that may mislead consumers.

Origin'Info offers brands a certain flexibility in displaying the information. According to the graphic charter, three logo options are available: 1) Listing raw materials and corresponding origins side-by-side; 2) Adding a factory image and processing location below; and 3) Building on Option 1 with a pie chart on the left, showcasing ingredient weight and origin proportions, with a separate section for unspecified ingredients. The logos depicted here are three variants of *Origin'Info* for a ready-to-eat '*spaghetti Bolognese*'.

Origin'Info requires a clear distinction between "*ingredients*" and "*agricultural raw materials*". Participating brands need to show where the raw ingredients used in their product's main ingredients come from. For instance, in a ready-made '*spaghetti Bolognese*' dish, flour is an ingredient used to make the pasta. However, the wheat itself is the agricultural raw material that goes into making that flour and which would be the object of the logo. Other raw materials in this example would be tomatoes and beef. A participating food business that undertakes to comply with the specifications may only use the *Origin'Info* logo under the conditions appearing in the graphic charter. These specifications are accompanied by a Frequently Asked Questions document to specify some of its technical details. The question is how the country of origin is to be determined without misleading the consumer.

The Frequently Asked Questions document states that "*The factory image indicates the country of the last substantial, economically justified processing or working within the meaning of Article 60 of Regulation (EU) No 952/2013 (…) laying down the Union Customs Code. It is therefore also applicable to processed foodstuffs in which several primary ingredients are used. For example, a chocolate cake may be "made in X" (factory image: X), even though the flour (primary ingredient No. 1), butter (primary ingredient No. 2), and chocolate (primary ingredient No. 3) are not native to X. Indeed, if these different ingredients have been mixed and cooked in X, to form the cake, the transformation will have taken place in X*".

EU rules on mandatory country of origin labelling (COOL)

In the EU, several food products are subject to mandatory country of origin labelling (hereinafter, COOL), including honey, fruits and vegetables, fish, certain meats and olive oil. France's *Origin'Info* complements these requirements.

COOL was made mandatory for unprocessed fresh beef and beef products following the bovine spongiform encephalopathy (*i.e.*, BSE) crisis by means of *Regulation (EC) No. 1760/2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products*. In addition, *Regulation (EU) No 1169/2011 on the provision of food information to consumers* (hereinafter, FIR) requires that unprocessed fresh, chilled or frozen meat of swine, poultry, sheep and goats be accompanied by a country of origin indication (see *Trade Perspectives*, Issue No. 23 of 13 December 2013).

Likewise, the FIR requires that COOL be mandatory in instances where a failure to provide such information could mislead consumers. Article 26(3) of the FIR requires that, where the origin of a food is given and is different from the origin of one of its primary ingredients, the origin of the primary ingredient be given or at least indicated as being different to the origin of the food product. *Commission Implementing Regulation (EU) 2018/775* clarifies how the information on the origin of the primary ingredient should be displayed on labels.

The scope of the mandatory COOL in the EU may be further expanded by specific provisions in the FIR that enable the Commission to table legislative proposals on mandatory COOL for, *inter alia*, other types of meat, milk, unprocessed foods and meat used as an ingredient in processed foods. The latter was sought on 12 May 2016, when Members of the European Parliament adopted a non-binding Resolution on the mandatory indication of the country of origin or place of provenance for certain foods, including for meat used as an ingredient in processed foods (see *Trade Perspectives*, Issue No. 10 of 20 May 2016).

So far, the EU did not adopt mandatory any COOL for meat used as an ingredient in processed foods. In May 2020, as part of the *Farm-to-Fork Strategy*, the Commission announced its intention to revise EU rules on the information provided to consumers, including to extend mandatory origin or provenance information for certain products, but a proposal has not yet been adopted. At the same time, in recent years, France has adopted laws on mandatory COOL on meat used as an ingredient in foods under *Decree No. 2020-363* of 27 March 2020 (see regarding an earlier version of the Decree, *Trade Perspectives*, Issue No. 14 of 15 July 2016).

***Origin'Info* supplements the EU's food labelling legislation**

France's new *Origin'Info*'s voluntary approach to inform the consumer about the origin of the agricultural raw material present in the primary ingredients is distinct from the rules on the indication of origin of primary ingredients as set out in Article 26(3) of the FIR. Brands participating in the voluntary *Origin'Info* must always disclose the origin of the primary ingredients. It cannot be ruled out that certain distributors may also exercise pressure on manufacturers to join *Origin'Info* in order for their distribution agreements to be continued.

Article 36 of the FIR provides that, in addition to the mandatory food information, other food information may be provided on a voluntary basis. Voluntary food information shall not mislead the consumer, shall not be ambiguous or confusing for the consumer and shall, where appropriate, be based on the relevant scientific data. Option 2 of the logo adds a factory image and processing location for the product. In view of Article 26(3) of the FIR, the affixing of the factory image, since it refers to the place of processing, and, therefore, the origin of the foodstuff, entails, where the origin of the foodstuff is different from the origin of its primary ingredient, the obligation for the participating brand to also indicate, in the vicinity, the place of origin of the primary ingredient (or to indicate that this place differs from that of the foodstuff).

Outlook

The first displays on the shelves or online using *Origin'Info*'s voluntary approach should be visible by the end of 2024. According to the specifications, an assessment will be carried out in the first half of 2025 to see if adjustments are needed or desirable, "*without this leading to the destruction of labels. Any decision to change the posting arrangements must take into account the time limits for reprinting*".

The next steps taken in the EU and its Member States on COOL, along with the eventual legislative proposals put forward, should be monitored and stakeholders should be prepared to participate in shaping potentially upcoming legislation by interacting with relevant Institutions, trade associations and other affected parties.

Recently adopted EU legislation

Customs Law

- *Commission Implementing Regulation (EU) 2024/1992 of 16 July 2024 concerning the classification of certain goods in the Combined Nomenclature*
- *Commission Implementing Regulation (EU) 2024/1993 of 16 July 2024 concerning the classification of certain goods in the Combined Nomenclature*
- *Commission Implementing Regulation (EU) 2024/1998 of 16 July 2024 concerning the classification of certain goods in the Combined Nomenclature*

Trade Remedies

- *Commission Implementing Regulation (EU) 2024/1919 of 12 July 2024 amending Implementing Regulation (EU) 2023/265 imposing a definitive anti-dumping duty on imports of ceramic tiles originating in India and Türkiye*
- *Commission Implementing Regulation (EU) 2024/1959 of 17 July 2024 imposing a provisional anti-dumping duty on imports of erythritol originating in the People's Republic of China*
- *Commission Regulation (EU) 2024/1999 of 19 July 2024 on the introduction and management of tariff-rate quotas for groats resulting from Regulation (EU) 2024/1392 of the European Parliament and of the Council on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the Union and Ukraine*
- *Commission Implementing Regulation (EU) 2024/1976 of 19 July 2024 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2021/633 on imports of monosodium*

glutamate originating in the People's Republic of China by imports of monosodium glutamate consigned from Malaysia, whether declared as originating in Malaysia or not, and making such imports subject to registration

Food Law

- *Commission Implementing Regulation (EU) 2024/1920 of 12 July 2024 approving a modification of a traditional term in the wine sector in accordance with Article 115(2) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council (Oloroso)*

- *Commission Implementing Regulation (EU) 2024/1921 of 12 July 2024 approving a modification of a traditional term in the wine sector in accordance with Article 115(2) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council (Palo Cortado)*

Antoine Bastos Martin, Ignacio Carreño, Joanna Christy, Tobias Dolle, Alejandro López Bo, Alya Mahira, Stella Nalwoga, and Paolo R. Vergano contributed to this issue.

Follow us on X @FratiniVergano

To subscribe to *Trade Perspectives*©, please click here. To unsubscribe, please click here.