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More than NAFTA 2.0? The US, Mexico and Canada agreed on the United States-Mexico-Canada Agreement

On 30 September 2018, the US, Mexico and Canada announced that they had concluded negotiations on the *US-Mexico-Canada Agreement* (hereinafter, USMCA). The new agreement between the three North American countries aims at replacing the current North American Free Trade Agreement (hereinafter, NAFTA). While the USMCA does not drastically deviate from the original NAFTA, there are still a number of noteworthy changes, such as stricter rules of origin for the auto industry, new rules designed to improve wages in the car manufacturing sector, increased market access in some key agricultural sectors (*e.g.*, dairy, poultry and sugar), and new provisions regarding the protection of geographical indications (hereinafter, GIs). The conclusion of NAFTA renegotiations can be characterised as an important milestone for the trade policy of the current US Administration likely delivering important trade advantages for the US to the detriment of Canada and Mexico. Still, the successful renegotiations might be considered an important achievement for the rules-based trading system.

When, on 1 January 1994, the NAFTA entered into force, it was considered to be the most advanced trade agreement of its time. After more than 20 years of implementation, an update to the NAFTA was first discussed at the *North American Leaders' Summit* in 2014, but then Mexico and Canada joined the US and other countries in the negotiations for the Trans-Pacific Partnership Agreement (hereinafter, TPP). In 2017, US President Donald Trump decided to withdraw the US from the TPP, while Canada, Mexico and the other TPP parties agreed to move on and concluded the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). On 23 January 2017, US President Trump announced his intention to renegotiate NAFTA and the first round of NAFTA renegotiations took place in August 2017. Trade tensions arose in the Spring of 2018, when the US decided to no longer exempt Canada and Mexico from recently introduced additional import tariffs steel and aluminium. After an impasse in the negotiations, in August 2018, the US and Mexico resumed their trade talks without Canada and reached a bilateral agreement on 27 August 2018. Canada resumed negotiations with the US on 5 September 2018 and, on 30 September 2018, agreed to join the new agreement. The USMCA will succeed the NAFTA and brings about a certain number of new rules.

First, the USMCA makes important changes to the Chapter on '*Rules of Origin*' (hereinafter, RoO). Local content is one of the elements of the RoO that determines what percentage of

inputs imported from third countries are permitted for goods made in the region, in order to benefit from the agreement. The USMCA makes RoO more demanding for car manufacturers by gradually increasing the required percentage of North American components in cars from 62.5% to 75%. Another significant change concerns the origin of steel and aluminium used in the manufacturing of cars, requiring producers to purchase 70% of it in North America. According to Mexico's auto industry, many of the main car manufacturing companies already complied with the 75% North America threshold. Still, the new rules and requirements might prove costly, lead to increased car prices for consumers and, therefore, affect trade. Additionally, also in the context of car manufacturing, the USMCA includes a rule mandating that at least 40% of car manufacturers' "*labour activities*" be undertaken by workers that earn a minimum wage of USD 16.00 per hour. This change was mainly introduced due to the comparatively lower labour costs in Mexico. While an increase of the minimum wage would generally be a welcome development for Mexican workers, it might still constitute a big and perhaps unsurmountable challenge for Mexican manufacturers.

One of the most significant changes in the USMCA is the increased market access for US dairy, poultry and eggs to the Canadian market. Dairy and poultry have been subject to longstanding trade disputes between the US and Canada, as agricultural policies in both countries created non-tariff barriers, which were then to the objects of various disputes. Already in the 1970s, the US had challenged Canada's import quotas for eggs under the rules of the General Agreement on Tariffs and Trade (hereinafter, GATT). The issue was then addressed during the trade negotiations that led to the Canada-US Free Trade Agreement (hereinafter, CUSFTA). While the CUSFTA provided the US with increased market access for poultry and eggs, it did not include preferential access for dairy. During the NAFTA negotiations in the early 1990s, discussions on agricultural market access had not been at centre stage, as Canada and the US expected to resolve this issue in the context of the multilateral negotiations of the Uruguay round, which were held in parallel. The CUSFTA was used as the basis for NAFTA negotiations and the CUSFTA rules applicable to dairy, poultry and egg trade between Canada and the US were included in the NAFTA.

The USMCA now provides the US with increased access to the Canadian market for dairy, as well as for poultry and eggs. The US will have access to Canada's dairy market on the basis of tariff-rate quotas (hereinafter, TRQs), worth about 3.6% of Canada's current dairy market. This is an increase compared to the 3.25% negotiated under the TPP and then allocated not only to the US, but to all TPP parties. Additionally, and arguably more significantly, Canada committed to the elimination of its '*Class 7'* dairy ingredient price strategy. Canada's '*Class 7*' is a domestic pricing class that governs milk ingredients such as skim milk powder and milk proteins. It was established in March 2017. The '*Class 7*' pricing class removed the incentive for Canadian dairy processors to use American *diafiltered milk* (*i.e.*, a subclassification of milk protein concentrate), which were exported to Canada through a '*loophole*', as American *diafiltered milk* was developed after the NAFTA had entered into force, meaning that it was not subject to the TRQs established by the NAFTA. Under the USMCA, Canada committed to ensure that "*milk class 7, including their associated milk class prices, are eliminated six months after entry into force of the* [USMCA]", and "*ensure that products and ingredients formerly classified under milk 7 shall be reclassified and that their associated milk class prices shall be established appropriately based on end use*". According to the Canadian dairy industry, the elimination of the '*Class 7*' pricing class could be costly and could constitute a "*serious threat"* to the Canadian dairy industry, as processors might increasingly use dairy products imported from the US.

With respect to poultry, the USMCA will grant the US increased duty-free market access to Canada to the tune of 47,000 metric tonnes of chicken from the first year of entry into force of the agreement, which would be significantly higher than the 3,917 metric tonnes that would have been granted under the TPP. The NAFTA currently links market access to Canadian domestic production levels and only provides reduced duties for the quota. The US will also gain additional market access to Canada's turkey, broiler hatching eggs and chicks' market. On the other hand, Canada will benefit from increased market access to the US, as the US agreed to grant an additional TRQ of 9,600 metric tonnes for refined sugar and sugar products

to Canada. Apart from the described issues, agricultural market access issues were not central part of the NAFTA renegotiations and, therefore, the USMCA rules on agriculture are largely based on the respective NAFTA rules.

An important novelty in the USMCA is the more detailed section on GIs within the Chapter on Intellectual Property. The USMCA provides a more detailed set of rules, which includes procedures for the objection and refusal of GIs, an article regarding multi component terms, and an article regarding the recognition of GIs in international agreements. However, most of the rules on GIs in the USMCA are no global novelties, but rather take up the text agreed within previous TPP negotiations. Article 20.E.7 on international agreements provides an exception clause, which states that the USMCA provisions do not apply to GIs that have been recognised as part of an international agreement and if this agreement has been concluded or agreed in principle prior to the date of conclusion, or agreement in principle, of the USMCA. Therefore, for instance, GIs recognised under the EU-Canada CETA would be subject to this exception. Arguably, this should also apply to the GIs recognised under the EU-Mexico Agreement, since it was '*agreed in principle*' prior to the conclusion of the USMCA. However, the situation with respect to the EU-Mexico Agreement is less clear, since no full list of approved and recognised GIs under the EU-Mexico Agreement has yet been published. Additionally, the US and Mexico issued a '*Side letter on Cheese names*', annexed to the USMCA, which lists 33 specific cheese names or types poised to be considered a '*common terms*' (*e.g.*, Cheddar, Brie, Pecorino), and for which Mexico confirms that market access of US products in Mexico is not restricted due to the mere use of these individual terms.

While the USMCA addresses and resolves some longstanding trade irritants, it does not address the more recent issue of import tariffs on aluminium and steel imposed by the US. In fact, the US tariffs and respective countermeasures remain in place. However, Canada and Mexico agreed on '*side letters*' with the US regarding the future application of *US Section 232 of the Trade Expansion Act of 1962* (hereinafter, Section 232) related to cars or any other good or service. The US agrees not to impose any "*measure imposing tariffs or import restrictions on goods or services*" to Canada and Mexico for at least 60 days after the imposition of the measure. During this period, the US would aim at reaching a bilateral solution with Canada and Mexico. With respect to tariffs on cars, the US also agreed, in '*side letters*' with Canada and Mexico, not to impose any additional import tariffs on a specified quantity of "*passenger vehicles, and light trucks imported from Canada [and Mexico] on an annual basis*". The '*side letters*' also provide that the parties may also discuss any modifications to the quantities "*due to changes in production, capacity, or trade*". In view of the continuance of the '*trade war*' waged by the current US Administration, these '*side letters*' are important concessions to Canada and Mexico.

The US, Canada and Mexico are scheduled to sign the USMCA on 30 November 2018 during the G20 Summit in Argentina, and it will then have to be ratified by the three parties. Due to political reasons, ratification is not expected to take place before early 2019. Once approved and ratified, the USMCA will replace the NAFTA. During the negotiations, US President Trump had stated his intention to include a so-called '*sunset clause*' in the USMCA, which would have required the parties to renegotiate the agreement every five years. The US, Canada and Mexico now agreed that the USMCA would apply for 16 years, with a formal review taking place after six years to determine whether to extend the originally agreed timeframe.

While the USMCA does not bring about fundamental changes compared to the NAFTA, it does provide for a number of new rules and provisions that will have an impact on businesses within the three USMCA parties and globally. It already appears that the US managed to achieve a number of important trade benefits, possibly to the detriment of Canada and Mexico, and in exchange for maintaining the trilateral basis for trade. All interested stakeholders should diligently assess the new USMCA and the new rules relevant to their business endeavours.

European Commission launches consultations on a draft Regulation setting a maximum limit of trans-fatty acids in food

On 4 October 2018, the European Commission (hereinafter, Commission) launched consultations (called '*feedback-mechanism*') to seek stakeholders' views on a draft Commission Regulation setting a maximum limit of trans fats or, more correctly, trans-fatty acids (hereinafter, TFAs), of 2 grams per 100 grams of fat in food intended for the final consumer. The proposed maximum limit would apply for TFAs other than the ones naturally occurring in animal fat. The consultation allows for feedback on the draft Regulation for four weeks and until 1 November 2018.

TFAs are specific types of unsaturated fatty acids and are naturally present in food products derived from ruminant animals, such as dairy products or meat from cattle, sheep or goat, as well as in some plants and products of vegetable origin (*i.e.*, leeks, peas, lettuces and rapeseed oil). Most importantly, TFAs are also present in fats that have been industrially processed to artificially solidify them through hydrogenation (*i.e.*, hydrogen treatment). Industrially produced TFAs can only be obtained through the process of partial hydrogenation. Partial hydrogenation of vegetable oils has an impact on the physiochemical and functional properties of the unsaturated fatty acids, thereby leading to a high content of TFAs (depending on the type of fat and method). Conversely, the process of complete hydrogenation (which is more costly), does not lead to TFAs. The majority of TFAs can be found in processed food products, such as ready meals, biscuits, potato chips, ready-made sauces or margarines, but also in take-away food. Already on 4 December 2009, the European Food Safety Authority (hereinafter, EFSA) adopted a scientific opinion concluding that the intake of TFAs should be as low as possible within the context of a nutritionally adequate diet.

In Denmark, the first country to mandate restrictions on industrially-produced TFAs in 2004, the TFA content of food products declined dramatically and cardiovascular disease deaths have declined more quickly than in comparable countries. Further to Denmark, a number of other EU Member States also introduced or announced legislation limiting the TFA content in food products to 2% of the total fat content of the food, including Austria (in 2009), Hungary (in 2013) and Latvia (in 2015). Voluntary measures aimed at reducing the TFA content of food exist in Belgium, Germany, Greece, the Netherlands, Poland, and the UK. National dietary recommendations on TFAs were issued in Bulgaria, Finland, Malta, Slovakia, and the UK. Finland, Greece and Spain introduced other legislative measures, such as limits on TFA content for specific products only. Legal measures limiting the content of industrial TFAs in foods also exist outside the EU, for instance in Iceland, Norway, Switzerland, as well as in the US. In the US, the Food and Drug Administration concluded in 2015 that partially hydrogenated oils (hereinafter, PHOs), the primary dietary source of industrial TFAs, are no longer to be considered as "*generally recognized as safe*" (*i.e.*, GRAS) for use in food and have, therefore, been prohibited since June 2018. At the EU level, the European Parliament had adopted, on 26 October 2016, a resolution calling for a limit on industrially produced TFAs in foods (see *Trade Perspectives*, Issue No. 20 of 4 November 2016)**.** *Commission Directive 2006/141/EC of 22 December 2006 on infant formulae and follow-on formulae* already sets legal limits for TFAs in infant formulae and follow-on formulae (*i.e.*, 3% of the total fat content of the food), to allow for the use of milk, which naturally contains ruminant trans fats, as a source of fat. *Regulation (EU) No. 1169/2011 on the provision of food information to consumers* (hereinafter, FIR) requires food business operators to specify in the list of ingredients of all pre-packed foods whether refined fats/oils are fully or partially hydrogenated.

Options of addressing TFAs were evaluated by the Commission in the *Report to the European Parliament and the Council regarding TFAs in foods and in the overall diet of the Union population* (hereinafter, the Report), adopted on 3 December 2015 according to Article 30(7) of the FIR. The Report recalled that coronary heart disease was the leading cause of death in the EU and that a high intake of TFAs seriously increased the risk of heart disease, more than any other nutrient on a per calorie basis. The Report details and evaluates five possible options to reduce TFA consumption in the EU: 1) The introduction of a mandatory TFA content

declaration; 2) An EU legal limit on the TFA content of food; 3) Voluntary agreements towards reducing TFA in foods and diets at EU level; 4) An EU guidance for national legal limits on the TFA content of food; or 5) The action could be left to the national level and/or to voluntary reduction efforts. According to the Report, leaving this issue to the EU Member States would not ensure that all EU citizens benefit from the reduction and would continue the current piecemeal approach, negatively affecting the EU Internal Market. The report concluded that establishing a legal limit for industrial TFAs in food appeared to be the most effective measure in terms of public health, consumer protection and compatibility with the Internal Market. The Commission requested the EFSA to compile the outcomes of scientific advice already provided by the EFSA on the health effects of trans fats, in particular on nutrition and health claims, dietary reference values and food additives, and to inform on how such scientific advice related to current goals and recommendations on the intake of TFAs. On 19 June 2018, the EFSA provided its conclusion based on a review of available scientific evidence that, according to the latest national and international recommendations, dietary intakes of TFAs should be as low as possible. On 15 May 2018, the World Health Organization called for the elimination of industrially-produced TFAs from global food supply (see *Trade Perspectives*, Issue No. 11 of 1 June 2018).

The Commission is now proposing a draft *Commission Regulation amending Annex III to Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods* as regards trans fat in foods intended for the final consumer, other than trans fat naturally occurring in animal fat. Trans fat is considered a substance, other than vitamins and minerals, for which harmful effects on health have been identified. The Commission proposes to place the substance in Part B of Annex III to the Regulation and its addition to foods or its use in the manufacture of foods should only be allowed under the conditions specified in that Annex, in view of the current state of scientific and technical knowledge.

The draft regulation states that, according to Article 8(2) of *Regulation (EC) No 1925/2006*, an entry for '*trans fat*' be added in Part B of Annex III to *Regulation (EC) No 1925/2006*, with the following conditions applying: "*a) The content of trans fat, other than trans fat naturally occurring in animal fat, in food which is intended for the final consumer, shall not exceed 2 grams per 100 grams of fat"*; and "*b) The definitions of 'fat' and of 'trans fat' set out respectively in points (2) and (4) of Annex I to Regulation (EC) No 1169/2011 shall apply*". In order to enable food business operators to adapt to the new requirements, food that does not comply with the Regulation may continue to be placed on the market until 1 April 2021.

According to Article 8(2) of *Regulation (EC) No 1925/2006*, the Commission may, on its own initiative or on the basis of information provided by EU Member States, take a decision, following in each case an assessment of the available information by the EFSA, to include, if necessary, a substance, other than a vitamin or mineral, or an ingredient containing a substance other than vitamins or minerals in Annex III: "*In particular: (a) if a harmful effect on health has been identified, the substance and/or the ingredient containing the substance shall: (i) be placed in Annex III, Part A, and its addition to foods or its use in the manufacture of foods shall be prohibited; or (ii) be placed in Annex III, Part B, and its addition to foods or its use in the manufacture of foods shall only be allowed under the conditions specified therein; (b) if the possibility of harmful effects on health is identified but scientific uncertainty persists, the substance shall be placed in Annex III, Part C*".

If a substance is added to foods or used in the manufacture of foods under conditions that would result in the ingestion of amounts of this substance greatly exceeding those reasonably expected to be ingested under normal conditions of consumption of a balanced and varied diet, and/or would otherwise represent a potential risk to consumers as provided for in Article 8(1) of *Regulation (EC) No 1925/2006*, Annex III to *Regulation (EC) No 1925/2006* provides, therefore, for the listing of substances whose use in foods in the EU is prohibited (Part A), restricted (Part B) or under scrutiny (Part C). However, Annex III to the regulation had remained empty from the adoption of the regulation in 2006 until 2015, when the first substances were included in Annex III at an initiative of Germany. *Commission Regulation (EU) 2015/403 of 11*

March 2015 amending Annex III to Regulation (EC) No 1925/2006 included two substances used in food supplements in Annex III: 1) Ephedra herb and its preparations originating from Ephedra species, which were listed in Part A; and 2) Yohimbe bark and its preparations originating from Yohimbe (Pausinystalia yohimbe (K. Schum) Pierre ex Beille), which were listed in Part C.

It must be noted that, in January 2003, in a preliminary draft proposal for a *Regulation of the on the addition of vitamins and minerals and of certain other substances to foods*, the Commission listed some substances in Annex III, including substances under EU scrutiny (*i.e.*, glucoronolactone, taurine and guarana); restricted substances (*i.e.,* caffeine and quinine, where the content in soft drinks might not exceed a limit to be established in mg/l) and prohibited substances and ingredients containing them (*i.e.*, ephedrine and its alkaloids, hormones, kava-kava, nicotine, aristolochic acid and St John's wort). When the proposal was finally adopted on 10 November 2003 and the legislative procedure began, the Commission withdrew the originally foreseen list of substances for Annex III, after consultations with the European Parliament, the Council, EU Member States and relevant stakeholders. Now, it appears that the Commission is using the possibility to include substances other than vitamins and minerals in Annex III on a case-by-case basis.

After the Commission's report had been published in 2015, the European Consumer Organisation BEUC expressed, that it was supportive of an EU limit of 2 grams of TFAs per 100 grams of fat. However, BEUC remained open to the option of prohibiting the use of PHOs, provided that such measure equally protected consumers' health. BEUC is concerned about the options of setting limits for TFAs (or banning PHOs) through voluntary agreements with food business operators, as such measures had proven ineffective in ensuring that all food businesses eliminate TFAs from their products. On the other hand, CAOBISCO, the Association of the Chocolate, Biscuits & Confectionery Industries of Europe, supported a voluntary commitment to reduce the levels of TFAs.

Fediol, the trade association of the EU Vegetable Oil and Proteinmeal Industry, raised an interesting point. If a legally binding limit to industrial trans fats levels in foods were to be adopted, according to Fediol, this would trigger the need to delete the existing full/partial hydrogenation labelling under Annex VII of the FIR. One of the rationales behind such labelling was to inform consumers on the presence of PHOs, which contain much higher TFA levels than 2% per 100 grams of fat, contrary to fully hydrogenated oils, where TFA levels are below 2% TFA. Fediol argues that, with an EU TFA 2% legal limit, all those high non-ruminant TFA food products would no longer be on the EU market and, therefore, hydrogenation labelling would no longer be needed. According to Fediol, consumers did not know the difference between partially or fully hydrogenated oils and confused both terms, thinking that products labelled as fully hydrogenated contain higher levels of TFA than PHOs. This would lead to discrimination for the vegetable oil and fat sector and particularly for all sectors using such ingredients.

Comments on the proposed Regulation can be made via an online feedback mechanism until 1 November 2018. After that deadline, the Commission could request approval for the Regulation by the Standing Committee on Plants, Animals, Food and Feed. If approval is given, the Council of the EU and the European Parliament would have two months to make objections. If they do not, the limit of 2 grams of TFAs per 100 grams of fat would be codified in EU law, although, according to the draft Regulation, food that does not comply with the Regulation may continue to be placed on the market until 1 April 2021. Interested stakeholders, food manufacturers and suppliers of key alternatives should closely follow these developments in the EU. The proposed EU measure with respect to TFAs looks poised to significantly affect the demand for certain vegetable oils on the world market.

An Advocate General of the Court of Justice of the EU holds that '*halal*' and '*kosher*' meat may, in principle, be issued the EU '*organic farming*' label – an update on the legal issues surrounding '*halal*' and '*kosher*' food production and trade

On 20 September 2018, Advocate General Nils Wahl at the Court of Justice of the EU (hereinafter, CJEU) delivered his Opinion in case C-497/17 and proposed "*that the Court of Justice of the EU find that products from animals that have been the subject of ritual slaughter without prior stunning can be issued the EU 'organic farming' label*". The broader issue of '*halal*' and '*kosher*' food production processes and labelling is a delicate issue at the crossroads of animal welfare, religious practices, standards and labelling, which is becoming increasingly important and controversial in view of international trade and of its often restrictive impact.

In 2012, the French farm animal rights association *Œuvre d'Assistance aux bêtes d'abattoirs* (hereinafter, OABA) submitted to the French Minister for Agriculture and Food a request for a ban on the use of the indication '*organic farming*' in the advertising and marketing of minced beef patties certified '*halal*' from animals slaughtered without pre-stunning. Stunning is the process of rendering animals immobile or unconscious, with or without killing the animal, when or immediately prior to slaughtering them for food production purposes. In order to qualify as '*halal*' or '*kosher*', specific religious rules apply, which do not necessarily include the pre-stunning of the animals. The organic certification body concerned, *Ecocert*, implicitly refused the request, and the competent French Administrative Court dismissed OABA's application. OABA appealed this decision at the Administrative Court of Appeal of Versailles. The Court of Appeal halted proceedings and submitted the case for a preliminary ruling to the CJEU, requesting an opinion on whether the applicable rules of EU law, deriving from, *inter alia*, *Council Regulation (EC) No 834/2007 on organic production and labelling of organic products*, its implementing *Commission Regulation (EU) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 with regard to organic production, labelling and control*, as well as *Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing*, must be interpreted as permitting or prohibiting the approval of the use of the EU '*organic farming*' label in relation to products derived from animals that have been slaughtered in accordance with religious rites without being previously stunned.

The Advocate General observes that organic products are subject to stricter production requirements than those applicable to non-organic ones. In that regard, he notes that the CJEU had underlined the importance that must be afforded to the objectives of food safety and consumer protection in order to preserve consumer confidence in products labelled as '*organic*'. However, he notes that neither regulation covering organic production *"expressly defines the method or methods of slaughtering animals that would meet the objectives of animal welfare or reducing animal suffering*" assigned to organic production. Slaughtering without stunning is not prohibited as such, as it is only required that, during slaughter, any suffering be kept to a minimum. Article 4(1) of *Regulation (EU) 1099/2009*, on '*stunning methods*', states that animals "*shall only be killed after stunning in accordance with the methods and specific requirements related to the application of those methods set out in Annex I*" of the Regulation, and that the "*loss of consciousness and sensibility shall be maintained until the death of the animal".* However, a subsequent clause of the Regulation states that *"[I]n the case of animals subject to particular methods of slaughter prescribed by religious rites, the requirements of paragraph 1 shall not apply provided that the slaughter takes place in a slaughterhouse".* Advocate General Wahl concludes that, in the absence of detailed rules as to the slaughtering methods prescribed by the legislation on organic farming, it is necessary to refer to the body of rules governing animal welfare at the time of killing. In that context, the rules governing ritual slaughter could not be disregarded.

It is the Advocate General's position that, the fact that the provisions of the organic farming regulations are silent, cannot be regarded as purely fortuitous, given that, *inter alia*, that particular issue had long been known and recognised in the provisions governing the slaughter of animals. Thus, applying this reasoning to '*kosher*' and '*halal*' indications, the Advocate

General considers that to conclude that ritual slaughter is incompatible with the label of '*organic farming*', would be equivalent to adding a condition not provided for in the current rules and would deny consumers of '*kosher*' or '*halal*' products the right to benefit from the guarantees provided by the '*organic farming*' label in terms of quality and food safety. Therefore, the Advocate General proposes that the Court find that *Regulation (EC) No 834/2007* and *Regulation (EC) No 1099/2009* do not, *per se*, prohibit the issuance of the EU '*organic farming*' label to products from animals that have been the subject of ritual slaughter without prior stunning.

In his Opinion, Advocate General Wahl also lays out his position on the arguments alluding to a restriction of religious freedom, noting that limiting '*halal*' or '*kosher*' organic certification would not represent a threat to religious freedom. He states that he was not convinced by the argument that "*is based on the notion that Muslims would be subjected to a restriction of their religious freedom if it should be concluded that the certifications 'halal' and 'organic farming' could not both be applied together"*. This is because people of the Jewish or Muslim faith would still be able to obtain '*kosher*' or '*halal'* meat, but would only be prevented from consuming *'kosher*' or *'halal*' meat certified as originating from '*organic farming*'. Therefore, Advocate General Wahl dismisses any question of interference with the freedom of worship that might be posed by the theoretical impossibility of combining the certification '*organic farming*' with the indication '*halal*'. He takes the view that the possibility of consuming products bearing those two certifications did not, as such, relate to the practice of a '*religious rite*'. The inability to obtain meat with the '*organic farming*' label from slaughterhouses that do not practise stunning would not affect the religious prescriptions, which do not require the consumption solely of products of organic farming. The Advocate General also considers that the question submitted to the Court was not so much whether the certifications '*organic farming*' and '*halal*' were compatible, but rather whether an '*organic farming*' certification may be issued for products from animals killed without pre-stunning. While the Advocate General's Opinion is not binding on the CJEU, it is often an indication of the eventual judgment by the Court. The Judges of the CJEU are now beginning their deliberations in this case and the judgment will be pronounced in the coming months.

In addition to this debate about labelling, a number of EU Member States have, in recent years, introduced legislation prohibiting the slaughtering of animals without prior stunning. As noted above, while Article 4(1) of *Regulation (EC) No. 1099/2009* provides that animals must only be killed after stunning, Article 4(4) provides that, in the case of animals subject to particular methods of slaughter prescribed by religious *rites*, the requirements of paragraph 1 shall not apply, provided that the slaughter takes place in a slaughterhouse. This was confirmed in the CJEU's judgment in Case C-426/16 *Liga van Moskeeën en Islamitsche Organisaties Provincie Antwerpen VZW and Others v Vlaams Gewest*, where the Court held that ritual slaughter without stunning may take place only in an approved slaughterhouse. Article 26(2)(c) of *Regulation (EC) No. 1099/2009* further provides that EU Member States may adopt stricter national rules aimed at ensuring more extensive protection of animals at the time of killing than those contained in the Regulation, though it remains controversial, which methods confer the least suffering. So far, a number of EU Member States have done so. For instance, on 14 February 2014, Denmark adopted Decree No. 135/2014, which prohibits the religious practice of slaughtering animals without prior stunning. The Danish Decree followed similar regulations in other European countries like the Netherlands, Norway, Poland, Sweden, and Switzerland. Most recently, the Belgian regions of Flanders and Wallonia both independently decided to require that animals be stunned before slaughter, regardless of whether religious rules allow it. The requirement will only become effective on 1 January 2019 in Flanders and on 31 August 2019 in Wallonia, though the respective decrees have been challenged before the Belgian Constitutional Court as possible violations of religious freedom.

In general terms, the debate on '*halal*' and '*kosher*' food, the production practices and the question of animal welfare, and the related labelling requirements also have important implications for international trade. This concerns the prohibitions of certain slaughtering or production processes in certain countries or regions, the applicable labelling requirements and potential incompatibilities as recently discussed in the EU, as well as the related standard-

setting for certain labelled products. The issue of slaughtering practices, in particular as it relates to animal welfare, raises important questions of international trade. In the framework of the World Trade Organization (hereinafter, WTO), there are three agreements that concern animal welfare to a varying extent: the WTO Agreement on the Application of Sanitary and Phytosanitary (hereinafter, SPS) Measures, the WTO Agreement on Technical Barriers to Trade (hereinafter, TBT), and the WTO Agreement on Agriculture. The World Organisation for Animal Health (OIE) recognises that animal health and animal welfare are linked. In WTO dispute settlement, the aspects of animal welfare and of '*halal*' requirements have been discussed in the context of the reference to the protection of "*public morals*", as referred in Article XX of the General Agreement on Tariffs and Trade (GATT) providing for general exceptions for WTO Members WTO obligations. Additionally, the EU has used its bilateral trade negotiations to advance animal welfare objectives, largely with dedicated provisions within the SPS chapters, but also in the context of the provisions on regulatory cooperation. However, the above-mentioned issues of production processes and labelling requirements would rather appear to be technical regulations, falling under the WTO TBT Agreement. Importantly, such rules may not be discriminatory vis-à-vis '*like*' products, and, Article 2.2 of TBT Agreement requires that "*technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective*". While WTO case law, for example in the *EC – Seal products* dispute, has recognised that the EU's "*public moral*" concern for animal welfare may in certain cases constitute such "*legitimate objective*", determinations must always be developed on a case-by-case basis.

With regards to standards, on 15 October 2018, during a meeting of the Association of Southeast Asian Nations' (hereinafter, ASEAN) Ministers of Agriculture and Forestry, Indonesia's Minister of Agriculture Andi Amran Sulaiman called on ASEAN Member States to establish a standard for '*halal*' products. This initiative may be guided by efforts to make Indonesia the world's largest producer of '*halal*'-certified products and Indonesia's interest to define the applicable standards for such products. Another option could be to regulate '*halal*' claims as so-called '*consumer preference claims*', as discussed within *Codex Alimentarius* (see *Trade Perspectives*, Issue No. 21 of 17 November 2017).

These issues pose a number of important questions that will have to be addressed by governments, food businesses operators, religious groups and society in general. First, it must be determined which slaughtering and production processes are allowed under public law and respecting religious rules and rites. As seen above, in certain countries, legislation might conflict with religious requirements. Secondly, applicable standards for food products and related labelling rights or requirements appear to play an increasingly important roles for regulators around the world. Thirdly and last but not least, the application of such rules, in particular if different in different markets, look poised to severely affect trade in such products and might constitute significant non-tariff measures or barriers that should be addressed in the various available *fora*.

The issue of specific religious rites applying to food and food production is delicate, but of increasing relevance for international trade. The global market for products labelled as '*halal*' or '*kosher*' is growing and countries, such as Indonesia, have identified the market potential. However, the standards-setting and establishment of labelling requirements may then have important implications for international trade. Stakeholders should closely monitor the developments in the EU, in South East Asia and beyond and ensure that regulators are aware of the various factors and their implications.

Recently Adopted EU Legislation

Customs Law

- *Council Regulation (EU) 2018/1554 of 15 October 2018 amending Regulation (EU) No 1370/2013 as regards the quantitative limitation for buying-in skimmed milk powder*

- *Commission Implementing Regulation (EU) 2018/1517 of 11 October 2018 laying down detailed rules implementing certain provisions of Council Regulation (EU) 2018/581 temporarily suspending the autonomous Common Customs Tariff duties on certain goods of a kind to be incorporated in or used for aircraft*

Trade Remedies

- *Commission Implementing Regulation (EU) 2018/1570 of 18 October 2018 terminating the proceedings concerning imports of biodiesel originating in Argentina and Indonesia and repealing Implementing Regulation (EU) No 1194/2013*

Food and Agricultural Law

- *Commission Regulation (EU) 2018/1556 of 17 October 2018 refusing to authorise certain health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health*

- *Commission Regulation (EU) 2018/1555 of 17 October 2018 refusing to authorise certain health claims made on foods and referring to the reduction of disease risk*

- *Commission Implementing Regulation (EU) 2018/1534 of 12 October 2018 amending Implementing Regulation (EU) No 185/2013 concerning deductions from fishing quotas allocated to Spain for 2017 and 2018*

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