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## **The EU's envisaged Carbon Border Adjustment – Can the EU be 'green' and comply with its WTO obligations?**

On 22 July 2020, the European Commission (hereinafter, Commission) launched a public consultation on the *EU Green Deal (carbon border adjustment mechanism)*, which will be open until at least 28 October 2020, but might be prolonged until December of this year. The Commission also launched an impact assessment of the intended measure, which aims at supporting the preparation of the Carbon Border Adjustment Mechanism (hereinafter, CBAM) initiative. The details of the EU's envisaged CBAM are not yet defined and are currently being discussed within the EU Institutions and by EU Member States. The EU's CBAM is supposed to be a key piece of legislation in the framework of the *European Green Deal*. Importantly, such mechanism might affect trade and would, therefore, need to be implemented in compliance with World Trade Organization (hereinafter, WTO) rules, notably avoiding discrimination between like products and among countries.

### ***Not so new proposal***

The discussion on a carbon border mechanism is not really a novelty, as three similar policies have been proposed by the EU in the past. In 2007, the Commission intended to introduce a '*Future Allowance Import Requirement*', as part of an unpublished draft amending the EU's Emission Trading System (hereinafter, ETS) Directive. And, in 2009 and in 2016, respectively, the Government of France proposed to extend the EU's ETS to importers through a '*Carbon Inclusion Mechanism*'.

The use of carbon border taxes to mitigate and, ultimately, to reduce emissions, has traditionally been one of the most controversial issues on the climate change agenda. Carbon border taxes are considered to be imposed on products imported from countries with laxer environmental regulations in order to counterbalance the competitive advantage that producers situated in such countries enjoy. In particular, the imposition of border measures is intended to address the competitiveness concerns arising from the cost that the industries in the country imposing such measures are facing in order to comply with stricter environmental standards.

On 11 December 2019, the Commission adopted a *Communication on the European Green Deal*, and the CBAM is one of the key policy instruments that were announced. The idea behind the CBAM is that, since the EU is investing heavily in a greener economy, which unquestionably raises costs in the production processes, companies could be faced with less green, but more competitive '*like products*' from outside the EU, where environmental

regulation may be less strict and less costly. This could either lead to a loss of market share in the EU market for EU businesses or it could lead to ‘carbon leakage’, which refers “to the situation that may occur if, for reasons of costs related to climate policies, businesses were to transfer production to other countries with laxer emission constraints” and which, ultimately, could lead to an increase in their emissions. In the *European Green Deal*, the Commission further noted that the “risk of carbon leakage may be higher in certain energy-intensive industries”. The CBAM is one of the key policy instruments within the *European Green Deal* and also intends to address the issue of ‘carbon leakage’.

### ***Imagining the future Carbon Border Adjustment mechanism***

The Commission is currently working on a legislative proposal for a CBAM. According to the Commission’s *Inception Impact Assessment* on the CBAM, published on 4 March 2020, the future CBAM would aim at ensuring “that the price of imports reflect more accurately their carbon content”. The Inception Impact Assessment states that the initiative would be “strongly linked to the pricing of carbon inside the EU, which is regulated for some sectors through the EU Emissions Trading System, and to some extent through the EU Energy Taxation Directive”. The CBAM would only apply to imports into the EU.

The Commission is currently conducting a public consultation and an impact assessment on the CBAM and is then expected to present its legislative proposal in 2021. According to the Inception Impact Assessment, the Commission intends to develop a number of policy options based on three different “building blocks”: 1) The type of policy instrument; 2) The methodological approach to evaluating the carbon content and carbon pricing of imported products; and 3) The sectoral scope. However, until now, there is no clarity on the design of the future proposal and on how a future CBAM could work in practice. In the EU, certain emissions are currently regulated through the ETS. The ETS is based on the ‘cap-trade system’ principle, which means that a limited cap is set on the total amount of certain greenhouse gas emissions that can be emitted by defined industry sectors. Within the cap, companies can receive or buy allowances, which can be traded with other companies. The cap is then linearly reduced over time so that the total emissions decrease. A growing number of sectors have been included in the ETS, which covers the 27 EU Member States, as well as Iceland, Liechtenstein, Norway, and the UK (see *Trade Perspectives, Issue No. 5 of 10 March 2017*). In this context, the Commission intends to design a new policy that aims at reducing EU carbon emissions, addressing ‘carbon leakage’, and incentivising other countries to join efforts.

In April 2020, the European Parliament’s Committee on International Trade (hereinafter, INTA) published a *briefing* in which it discusses four possible policy options for a CBAM: 1) *A carbon pricing of imports*; 2) *A tariff that compensates for differences in carbon prices*; 3) *A uniform tariff on imports*; and 4) *Consumption-based carbon taxation*. The first three options are measures to be applied at the border, while the fourth measure would be implemented domestically (*i.e.*, behind the border). First, a ‘carbon pricing of imports’ would introduce a price on imports based on the carbon content of the imported good, either in the form of an import tax or requiring importers to purchase ETS allowances. Such policy could also be combined with an *export rebate*, which refers to a partial refund or kind of compensation, for a complete carbon border adjustment solution. Under the second policy option, a price on the imports would be set to compensate the difference on the carbon price used in the exporting country and the one used in the EU. However, this approach risks being applied on a discriminatory basis as it would make a *de facto* distinction between domestic products and imported products. The third policy option, ‘a uniform import tariff’, would set a uniform and low import tax applicable to all products and countries that do not implement carbon policies. The fourth option, a consumption-based carbon taxation, would be implemented domestically and not at the border. Under this option, a carbon tax would be imposed on consumption and would target all goods of domestic or foreign origin. Such consumption tax could be combined with the free allowances currently existing under the EU ETS. It remains to be seen which approach the Commission will pursue for its forthcoming legislative proposal following the inputs from the consultation and impact assessment.

## **Possible conflicts with WTO rules?**

Despite the clear objective of the CBAM, many legal uncertainties remain at this stage. As the CBAM would likely constitute an innovative policy tool and as many details remain unclear, the legal viability of the concept has yet to be determined. Clearly, the EU will have to develop a mechanism that complies with relevant WTO disciplines. How the EU will design the CBAM will be crucial for determining its consistency with WTO rules, especially if the EU were to apply a discriminatory border measure that only applies to imports.

The compatibility of these measures with WTO rules is a matter of concern. The General Agreement on Tariffs and Trade (hereinafter, GATT) prohibits WTO Members from imposing tariffs and charges in excess of the level committed in their respective Schedule of Concessions. In addition, the GATT prohibits levying internal taxes or charges in excess of those applied to like domestic products. Nevertheless, it allows WTO Members to impose charges and internal taxes that are not in excess of taxes applied to 'like' domestic products. A difficulty, when assessing whether the charge levied on the imported product is equivalent to that applied to the domestic product, arises, for example, where the importing country does not maintain a simple tax scheme, but a more complex emissions trading scheme, such as the EU ETS. Additionally, with respect to the issue of 'likeness' related to Article III of the GATT on '*National Treatment on Internal Taxation and Regulation*', currently, processing methods cannot be used to classify two products as different (or not 'like') and that, therefore, a CBAM would run the risk of being inconsistent with WTO rules.

That being said, Article XX of the GATT on '*General exceptions*' does allow WTO Members to adopt certain (*de facto* discriminatory) measures, when they are justified in order to protect human, animal or plant life or health, or relating to the conservation of exhaustible natural resources (Article XX(b) and (g) of the GATT, respectively). However, both exceptions are subject to strict requirements. So far, in the majority of WTO disputes, WTO Members failed to justify their environment-related measures. In particular, in relation to Article XX(b) of the GATT, a measure would need to pass the necessity test.

In any case, any future EU CBAM should be implemented in the least trade restrictive way possible. Additional import tariffs will almost certainly be challenged by other WTO Members. A domestic tax within the EU would be possible and not subject to WTO rules, though politically challenging in the EU.

## **Political, legal, and economic implications**

The abovementioned options for the EU's future CBAM pose both legal, but also political challenges to the EU. Where a *consumption-based carbon taxation* would imply an additional tax on consumers, the three other options are legally complex and will likely be challenged.

On 16 September 2020, the President of the Commission *Ursula von der Leyen* noted in her State of the Union speech that "*there should be a global price on carbon*". However, during the negotiations of the *Paris Agreement under the United Nation Framework Convention on Climate Change* (UNFCCC), it proved impossible to reach global consensus on a carbon price. Therefore, with the exception of a few other countries, the EU stands alone with its ETS. With the aim of accelerating the EU's ambition to become the first "*climate neutral continent*", the EU also intends to review its ETS. This will require additional efforts from European businesses and, therefore, will put additional pressure on Europe's global competitiveness. For this reason, the future CBAM is considered the instrument to counterbalance the level playing field with imported and less climate friendly competitive products.

## **Way forward**

The impact assessment informing the Commission's proposal is expected to be published during the first quarter of 2021. The Commission's legislative proposal is then expected to be

published in the second quarter of 2021. Businesses in the EU and around the world should participate in the public consultation, which is set to remain open until December 2020, and closely monitor the upcoming legislative procedure.

## **The Government of Indonesia aims at reducing imports by 35% by 2022: An overview of current developments regarding Indonesia's importation regimes**

During the second term of Indonesia's President *Joko 'Jokowi' Widodo*, Indonesia's Ministry of Industry has set its agenda to focus on the development of industrial zones, the increase exports of manufacturing goods, the reduction of imports of consumer goods and raw materials, and the promotion of import-substitution industrialisation. In simple terms, import-substitution industrialisation refers to a policy that supports the replacement of imports with domestically produced goods in order to support the domestic industry. The plans follow President *Jokowi's* Administration's stated policy objective to reduce imports by 35% by 2022. On 3 June 2020, following the outbreak of the *Covid-19* pandemic earlier this year, Indonesia's Minister of Industry *Agus Gumiwang* announced the Government's decision to delay the deadline to achieve this controversial goal by one year, from 2021 to 2022, as the pandemic significantly affected the country's manufacturing productivity and market demand.

### ***Import reduction: policy rationale and focus***

Indonesia's *Law No. 3 Year 2014 concerning Industry* mandates the Government of Indonesia to increase the resilience of the domestic industry. In essence, the law provides the legal basis for the Government to promote import substitution industrialisation, increase the use of domestic products, and reduce the manufacturing sectors' strong reliance on imports of consumer goods and raw materials. Indonesia's long-standing goal to reduce imports is also specified in the *Ministry/Institutional Work Plan for 2020 Budget Year*, in the *Presidential Regulation No. 2 Year 2020 concerning National Industrial Policy for the Year 2015-2019*, and in the *Principal Plan for National Industry Development 2015-2035*.

For the past two years, Indonesia's trade balance has recorded trade deficits and, in 2019, the trade deficit amounted to USD 3.5 billion with the yearly import value totalling USD 171 billion, according to data from Indonesia's Statistics Agency (*i.e.*, *Badan Pusat Statistik*, hereinafter, BPS). To avoid future trade deficits and to improve the competitiveness of the domestic industry, the Government of Indonesia established an import reduction target of 35% by 2022, which is expected to increase domestic production by 12.89%, absorbing more labour and investment, as well as increasing spending on domestically manufactured products.

The import reduction focuses on industries that recorded large import values in 2019, such as: 1) Automotive; 2) Textiles; 3) Food and beverages; 3) Electronics; 4) Petrochemicals; 5) Medical equipment manufacturing; 6) Pharmaceuticals; 7) Machinery; and 8) Rubber goods. Indonesia's Ministry of Industry, in coordination with other relevant ministries and institutions, is currently developing a comprehensive roadmap to achieve the import reduction target.

### ***Various policy instruments to achieve the objective***

The Government of Indonesia is expected to introduce several import control instruments, *inter alia*, pre-shipment inspections, the limitations of designated ports of entry for certain commodities, a return to border inspections from the current post-border regime, and the rationalisation of the country's bonded logistics centres. In July 2020, the Government of Indonesia also announced that it was planning to introduce additional medium and long term measures, such as trade remedies and technical regulations, along with increasing the most-favoured nation (MFN) applied tariff rates for certain strategic commodities.

*Inter alia*, Minister *Agus Gumiwang* reportedly plans to add 28 commodities to the list of goods for which the import and export are restricted and/or prohibited, as well as increasing the

number of compulsory Indonesian National Standards (*i.e.*, *Standar Nasional Indonesia*, hereinafter, SNI) for various industries, as applicable to domestic or imported products. Earlier this month, for example, the Indonesian Iron and Steel Industry Association and Indonesia's National Standardisation Body signed a cooperation agreement for the development and implementation of SNIs for iron and steel. The Industrial Research and Development Agency also confirmed that additional SNIs could help to reduce imports and, subsequently, improve the competitiveness of goods produced by the domestic steel industry.

In parallel to the import reduction, Indonesia's Ministry of Industry also aims at increasing the domestic production capacity across a number of the country's industrial manufacturing sectors. The stated aim is to further increase the import substitution figure by 60% in 2020, by 75% in 2021, and by 85% in 2022, respectively. While the roadmap has yet to be devised, it is apparent that the Government of Indonesia has already issued some '*import control*' measures, including trade remedies and limiting the designated ports of entry for certain goods.

### ***More trade remedies to come?***

According to Minister *Agus Gumiwang*, Indonesia imposes relatively few trade remedies, such as safeguards, anti-dumping duties, and countervailing measures compared to other countries in the Asia-Pacific region, such as China, India, the Philippines, and Thailand. According to data from the Ministry of Industry, Indonesia currently imposes safeguard measures on 102 products and imposed 48 anti-dumping duties.

In 2020, the Government of Indonesia, based on investigations carried out by the Indonesian Trade Safeguard Committee (*i.e.*, *Komisi Pengamanan Perdagangan Indonesia*, hereinafter, KPPI), issued five regulations imposing safeguard duties on the imports of, *inter alia*, curtains, yarns, interior blinds and bed valances (see *Trade Perspectives*, [Issue of 19 June 2020](#)). Most recently, Indonesia imposed a safeguard duty on the imports of ceramics from India and Viet Nam through *Minister of Finance Regulation (PMK) No. 111/PMK.010/2020*, effective from 1 September 2020. Prior to September 2020, India and Viet Nam were exempt from Indonesia's safeguard duty imposed to countries such as China, Japan, and the US, but the increase of the volume of imports of ceramic tiles by 22.72% and 6.58%, respectively, from the two countries appears to have led to the Government of Indonesia's decision to charge a safeguard duty of 23% on products from those two countries for the next twelve months. On 10 June 2020, the KPPI also initiated a safeguard investigation regarding the alleged surge of imports of carpets and other textile floor covering, which, according to data from BPS, increased by 25.2% between 2017 and 2019.

From the perspective of the World Trade Organization (hereinafter, WTO), introducing trade remedies, such as safeguard measures, is compatible with Indonesia's rights and obligations, provided that the investigations and determinations comply with the applicable WTO rules, notably the Agreement on Safeguards (hereinafter, SG Agreement) and, for anti-dumping and countervailing measures, the respective WTO Agreements. Indonesia's current safeguard measures appear to comply with the substantive and procedural requirements of the SG Agreement and have not been challenged at the WTO. In essence, investigations concluded by the KPPI appear to show that the requirements to invoke safeguard measures have been met, namely increased imports and a serious injury or threat to domestic industry caused by such increased imports. To date, as mentioned, no WTO Member raised the issue or alleged any claim of inconsistency against Indonesia's recent safeguard duties.

### ***The importation of certain consumer goods through designated ports of entry***

In order to control the importation of consumer goods that are currently in high demand due to the *Covid-19* pandemic, Indonesia's Minister of Trade issued *Minister of Trade Regulation No. 68 Year 2020 concerning Import Provisions for Footwear, Electronic Equipment, Bicycles and Tricycles* (hereinafter, *MoT Regulation 68/2020*), which entered into force on 28 August 2020. The regulation establishes new import requirements for footwear with rubber sole, air temperature control devices, and two-wheeled and three-wheeled bicycles, corresponding to

a total of 11 tariff posts. According to Indonesia's Statistics Agency BPS, the import value of those commodities amounted to USD 333.2 million during the period of January to June 2020.

The Government of Indonesia's approach of limiting the ports of entry for the imports of certain consumer goods, and possibly other products, will almost undoubtedly affect international trade and Indonesia's obligations under WTO disciplines, more specifically under Article XI:1 of the GATT. Article XI:1 of the GATT sets out a general prohibition on quantitative restrictions on imports or exports, which applies to all measures instituted or maintained by a WTO Member prohibiting or restricting the importation, exportation, or sale for export of products other than in the form of duties, taxes, or other charges, such as restrictions on ports of entry.

In the case of *Colombia – Ports of Entry*, the WTO Panel ruled that Colombia's prohibition on the import of textiles, footwear, and apparel from Panama, except at the ports of Bogota and Barranquilla, was inconsistent with Article XI:1 of the GATT, as it limited the competitive opportunities for the relevant products. The uncertainties arising from the prohibition were considered substantial and '*limiting*' since importers were only allowed to use one seaport and one airport. The Panel also referred to the increased costs that would arise for importers operating under the constraints of the port restrictions. In relation to Indonesia's *MoT Regulation 68/2020*, it could be argued that the restriction on the designated ports of entry would entail higher costs for traders.

To possibly avoid any WTO-inconsistency, the Government of Indonesia could link the designation of particular ports of entry to certain legitimate and verifiable policy objectives, such as the prevention of smuggling of goods or the assurance of verification or technical inspection only available in certain ports with adequate infrastructure. However, given the adoption of these controversial measures as part of a Government policy designed to drastically reduce imports and provide a certain degree of protection to domestic production, it will be hard for Indonesia to justify such import restrictions and withstand WTO scrutiny.

### ***Further changes ahead***

The safeguard measures and designation of certain ports of entry discussed above are only few of many existing or upcoming measures to support the Government of Indonesia's policy of import-substitution industrialisation. Further measures, such as a change from the current post-border inspections to border inspections, the planned increases in certain applied tariffs, and the additional local content requirements vis-à-vis certain products, are expected to be introduced in the near future.

It looks like Indonesia is on a very '*slippery slope*' and may soon be facing a barrage of WTO challenges by its trading partners or, even worse, tit-for-tat retaliations to its import restrictive policies and measures of dubious WTO consistency. Indonesia would actually be much better off if it facilitated trade, attracted investors, new technologies and gave some '*oxygen*' to its economy. The recipes are many and well known and it is unlikely that simply limiting imports, through both legal and/or dubious measures, will result in Indonesia addressing its weaknesses and improving its trade deficit.

As the Indonesian Government tries to achieve the import reduction target in the next two years, importers, business actors, and relevant stakeholders should pay close attention to Indonesia's importation regimes, adjust to the applicable regulations, and work with trading partners to ensure that Indonesia's measures/policies remain WTO-compliant or are challenged if deemed discriminatory, restrictive and illegal.

## Supporting the growth of organic farming as a key part of the EU's *Farm to Fork* strategy to achieve greater sustainability in the food chain

On 4 September 2020, the European Commission (hereinafter, Commission) launched a [public consultation](#) on 'Organic farming - action plan for the development of EU organic production'. The future Action Plan is supposed to complement *Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007* in supporting the EU organic sector as a key element for achieving the objectives laid down in the EU's *Farm to Fork* strategy unveiled in May of this year.

### **The EU action plan and organic farming in the EU**

In the framework of the *European Green Deal*, launched in December 2019 to make the EU economy more sustainable and climate neutral, the Commission committed to a series of objectives to be achieved by 2030. These include reducing the use of hazardous pesticides by 50%, reducing nutrient losses in soils by at least 50%, tackling antimicrobial resistance and achieving that at least 25% of EU agricultural land be farmed organically. To meet the latter target, the Commission has proposed to set up an Action Plan supporting EU Member States to stimulate both supply and demand for organic products.

In 2018, organically cultivated land only occupied less than 8% of the agricultural area in the EU. Given the objectives of the *European Green Deal*, the Action Plan is supposed to contribute to increasing the surface of organically cultivated products. It will provide a common framework to support initiatives taken by EU Member States, regional, or local authorities to address problems specific to their territory. The initiative aims at ensuring greater availability and accessibility of organic products across the EU, notably by "growing consumption [...] to encourage farmers to shift to organics", through production incentives, and by "improving the contribution of the organic sector to climate neutrality, environmental protection and biodiversity preservation".

The actions are supposed to complement *Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007*, which reforms EU rules on organic production and was originally due to enter into force on 1 January 2021. However, following an opinion of the European Parliament, EU Member States, and other major stakeholders, the Commission proposed a postponement of its application to 1 January 2022. The postponement is partially due to the disruptions caused by the *Covid-19* pandemic, which caused delays in the approval of secondary EU legislation. Presently, the organic sector in the EU is regulated by *Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91*, which sets out the rules of organic production and defines how organic products are to be labelled. The Regulation is complemented by several Commission implementing acts related to the production, distribution, and marketing of organic goods.

### **Main changes in the EU legislation on organic farming**

Article 2(1) of *Regulation (EU) 2018/848* establishes that the categories of products that can be organically certified are: 1) Live and unprocessed agricultural products – animals, plants and seeds; 2) Processed food; and 3) Feed. As a novelty vis-à-vis *Council Regulation (EC) 834/2007*, Annex I to *Regulation (EU) 2018/848* provides a list of products other than those established in Article 2(1), but that can also be certified as organic. The list includes, *inter alia*, yeasts, maté, vine leaves, palm hearts, hop shoots, silkworm cocoon, natural gums and resins, essential oils, cork stoppers, raw cotton, raw wool, raw hides, plant-based traditional herbal preparations.

According to *Regulation (EU) 2018/848*, organic farmers will be subject to a series of new production rules. For instance, for livestock farmers, as from 2023, 70% of feed destined for cows, sheep, goats, horses, deer and rabbits, and 30% for pigs and poultry, respectively, must originate in the same region where those animals are bred. Presently, *Council Regulation (EC) No 834/2007*, establishes the amounts at 60% and 20%, respectively.

As regards controls and certification, *Regulation (EU) 2018/848* provides for additional specific control requirements. The organic control system is closely linked to *Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products*. For instance, retailers that only sell pre-packaged organic products will not need certification, but will be subject to official controls under *Regulation (EU) 2017/625*.

Currently, *Council Regulation (EC) 834/2007* stipulates that organically certified farms are to be inspected every 12 months. Under Article 38 of *Regulation (EU) 2018/848*, controls on organic farms are to be carried out on a risk basis and, as before, at least once a year. A derogation is established for certain farms that may be subject to inspection only every 24 months, if specific conditions are met. Additionally, EU Member States can, at their discretion, exempt from certification those farmers that sell small quantities of unpacked organic products, other than feed, directly to the final consumer, provided that certain conditions are met, notably that; 1) Sales do not exceed 5,000 kg per year; 2) Such sales do not represent an annual turnover in relation to unpacked organic products exceeding EUR 20,000; and 3) The potential certification cost of the operator exceeds 2% of the total turnover on unpacked organic products sold by that operator.

Article 36 of *Regulation (EU) 2018/848* also expands the system of “*groups of operators*”, which will allow certain farmers and operators to get organised and be certified as a single entity. The new provisions will provide small-scale farmers and operators with the necessary flexibility in view of the relatively high inspection costs in certain sectors and the administrative burdens linked to organic certification.

With respect to the import of organic products from third countries, *Commission Regulation (EC) No 1235/2008 of 8 December 2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007, as regards the arrangements for imports of organic products from third countries*, establishes two control systems. The first system is based on equivalence agreements with those third countries that are currently recognised by the Commission as having standards on organic farming equivalent to those applied by the EU. Those countries will have to renegotiate the terms for the equivalence agreements under *Regulation (EU) 2018/848*. Under the current system, so far only thirteen trading partners are recognised as having a system equivalent to the EU, namely: Argentina, Australia, Canada, Chile, Costa Rica, India, Israel, Japan, the Republic of Korea, Switzerland, Tunisia, the US, and New Zealand. A second system is based on control bodies and provides that, in all third countries that do not have an equivalence agreement with the EU, inspection and certification is the responsibility of control bodies or authorities appointed by the European Commission to ensure that organic producers in their area of responsibility follow standards and control measures equivalent to the EU, referred to as ‘*unilateral equivalence*’ (see *Trade Perspectives, Issue No. 1 of 12 January 2019*). Under *Regulation (EU) 2018/848*, the possibility of concluding new equivalence agreements with third countries remains available, while the system of ‘*unilateral equivalence*’ is phased out. Under the new framework, the recognition of control bodies is progressively shifted to a regime that requires compliance with EU rules. This change of approach has been justified by the EU with the realisation that, operating under the principle of equivalence, the schemes that are certified as equivalent to the EU’s own rules often tolerate the use of practices not permitted in the EU, which could place EU organic farmers at a disadvantage.

## ***Mutual recognition for the UK and the EU organic food standards***

On 31 January 2020, the United Kingdom officially left the EU and became a third country but, during a transitional period agreed until 31 December 2020, most EU rules still apply to UK products and producers. If the ongoing EU-UK negotiations for a future trade relationship do not include an equivalence agreement regarding standards on organic farming, organic products originating in the UK will not be allowed on the EU market (and, arguably, *vice-versa*). The growth in EU consumer demand represents a significant opportunity for UK operators. UK control bodies have reportedly applied for recognition in accordance with *Commission Regulation (EU) 1235/2008*. However, if the equivalence agreement were not to be secured during the negotiations for a bilateral preferential trade agreement, any product intended for the EU market would need to comply with the new EU rules established by *Regulation (EU) 2018/848*. EU exporters of organic produce to the UK would also be similarly impaired. Additionally, the UK is the world's ninth biggest market for organic produce and the sector is predicted to reach a value of GBP 2.6 billion by the end of 2020.

### **Next steps**

*Regulation (EU) 2018/848* was due to come into force on 1 January 2021, but the Commission has recently proposed to delay its entry into force by one year to 1 January 2022, providing small-scale farmers and organic operators in the EU and in third countries with increased flexibility and greater opportunity to adapt to the changing rules for this rapidly growing sector. The proposed delay should provide the Commission ample time to pursue the adoption of all necessary secondary legislation and should allow organic operators and competent authorities to ensure a smooth transition to the new regime. The proposed Action Plan, due for adoption in early 2021, will complement *Regulation (EU) 2018/848* and is expected to support the sustainability of the EU agri-food sector, providing organic operators and EU Member States with tools and funding opportunities aimed at achieving a balanced and sustainable growth of the sector. Organic operators in the EU and in third countries are advised to get acquainted with the rules established by the new EU legal framework in order to take full advantage of the opportunities offered in a sector that is expected to grow steadily in the coming years.

## **Recently Adopted EU Legislation**

### **Food and Agricultural Law**

- *Commission Implementing Regulation (EU) 2020/1295 of 16 September 2020 amending Implementing Regulation (EU) 2015/408 as regards the inclusion of the active substances carbetamide, emamectin, flurochloridone, gamma-cyhalothrin, halosulfuron-methyl, ipconazole and tembotrione in the list of candidates for substitution ( 1 )*

### **Trade Remedies**

- *Commission Implementing Regulation (EU) 2020/1296 of 16 September 2020 amending Regulation (EC) No 88/97 on the authorization of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93*

## Environment

- *Opinion of the European Economic and Social Committee on ‘Financing the Transition to a Low-Carbon Economy and the Challenges in Financing Climate Change Adaptation’ (exploratory opinion)*

## Other

- *Commission Decision (EU) 2020/1301 of 17 September 2020 approving, on behalf of the European Union, the modification of Appendix 1 to Annex XIII to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Ecuador and Peru, of the other part*

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