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Webinar on '*Thailand & Sustainable Global Supply Chains*'

FratiniVergano, the *EU-ASEAN Business Council* (EU-ABC) and the *Thai-European Business Association* (TEBA), in partnership with the Office of Commercial Affairs of the Thai Ministry of Commerce and the Royal Thai Embassy and Mission of Thailand to the EU in Brussels are pleased to invite you to participate in the Webinar on '*Thailand & Sustainable Global Supply Chains*', which will take place virtually via Zoom on 9 December 2021, 10.00-11.30 CET (16.00-17.30 Bangkok).

The Thai Roundtable is a timely opportunity to understand more about Thailand's sustainability initiatives and how these build into more sustainable global supply chains. The event will also reflect on Thailand's commitment, and on-going initiatives, to reinforce cooperation with the EU on a rules-based international order and for a more sustainable trade and investment environment in the context of the EU's '*Indo-Pacific Strategy*'.

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The EU-US agreement on steel and aluminium tariffs: An important step for EU-US trade relations, but does it undermine WTO rules?

On 30 November 2021, the *Commission Implementing Regulation (EU) 2021/2083 of 26 November 2021 suspending commercial policy measures concerning certain products originating in the United States of America imposed by Implementing Regulations (EU) 2018/886 and (EU) No 2020/502* entered into force. The Implementing Regulation reflects the agreement that the EU and the US reached, on 31 October 2021, regarding the additional US tariffs on steel and aluminium and related EU measures. In the agreement, the US agreed to suspend its additional import tariffs on steel and aluminium of EU origin, which it had adopted on 1 June 2018 under Section 232 of the *Trade Expansion Act of 1962*. Consequently, the EU agreed to suspend its rebalancing measures on US imports that it had taken in reaction to the US' tariffs in June 2018. While this development is a positive signal for EU-US relations and it addresses a dangerous bilateral trade irritant, the agreement could be considered as a '*Voluntary Export Restraint*' by the EU, which would be prohibited under World Trade Organization (hereinafter, WTO) rules.

US additional import tariffs on steel and aluminium from certain countries

On 8 March 2018, then US President *Donald J. Trump* exercised his authority under Section 232 of the US *Trade Expansion Act of 1962* and announced additional tariffs of 25% on steel imports and an additional 10% duty on aluminium imports, allegedly in order to protect the domestic US industries in both sectors from unfairly traded imports that the US Department of Commerce determined to pose a threat to US national security (see *Trade Perspectives*, Issue No. 5 of 9 March 2018). Initially, the US introduced these additional import tariffs on certain steel and aluminium products from all countries. However, the US then temporarily exempted certain trading partners until 31 May 2018, namely Argentina, Australia, Brazil, Canada, the EU, Mexico, and South Korea. On 30 April 2018, the US announced agreements with Argentina, Australia, and Brazil, which were finalised before 1 June 2018, though the specific terms and conditions of these agreements were not made public. While Argentina announced that it had agreed to a quota limiting its steel and aluminium exports to 180,000 metric tonnes per year, Brazil and Australia did not reveal any details of their agreements with the US. The exemption for the EU was not extended so that the additional import tariffs on steel and aluminium products of EU origin started to apply on 1 June 2018.

The introduction of the additional US import tariffs led to the introduction of countermeasures by various affected trading partners and to an important number of requests by other WTO Members for WTO Dispute Settlement consultations (see *Trade Perspectives*, Issue No. 20 of 2 November 2018). In June 2018, the EU adopted its initial rebalancing measures in response to the additional US tariffs on steel and aluminium. The rebalancing measures were calculated on the basis of the value of the EU's steel and aluminium exports affected by the US measures, which amounted to a total of EUR 6.4 billion. Initially, a list of US products with a value of EUR 2.8 billion were subject of additional tariffs. Additional rebalancing tariffs were intended to enter into force on 1 December 2021. In June and July 2018, the EU and the US, respectively, initiated WTO disputes against each other regarding the Section 232 measures (WT/DS548) and the EU's rebalancing measures (WT/DS559).

The agreement on steel and aluminium

On 31 October 2021, the EU and the US issued a *Joint Statement* in which they announced their agreement to start discussions "*on a Global Arrangement on Sustainable Steel and Aluminium*" with the objective to address "*global non-market excess capacity, as well as the carbon intensity of the industries*". Both parties would aim at concluding negotiations on the arrangement within two years. Additionally, both parties stated that liked-minded economies would be invited to participate in the arrangements and to contribute to achieving the objectives of the *Global Arrangement on Sustainable Steel and Aluminium*.

The US and the EU agreed to suspend the additional tariffs and counterbalancing measures, respectively. More specifically, the US agreed to replace the existing additional tariffs of 25% on steel products of EU origin, and the additional tariffs of 10% on aluminium products of EU origin under Section 232, with a tariff-rate quota (hereinafter, TRQ) system. The agreement states that, from 1 January 2022, the US would allow "*duty-free importation of steel and aluminium from the EU at a historical-based volume*".

The US' *Announcement of Actions on EU Imports Under Section 232* states that, for steel products, the US sets an annual import TRQ of 3.3 million metric tonnes covering 54 product categories and allocated on a "*EU member state basis in line with the 2015-2017 historical period*". For the products to be eligible under the TRQ, the agreement notes that "*steel imports must be* '*melted and poured*' *in the EU according to current U.S. requirements and rules implementing this arrangement*". Imports under the TRQ would enter the US at a 0% tariff. The agreement notes that the US would conduct annual reviews of the TRQ in order to calculate the level of US steel demand. According to the agreement, for each 6% "*that this calculated level is above or below U.S. steel demand in 2021*", the TRQ volume would increase or decrease, respectively, by 3% in relation to the 3.3 million metric tonnes for the subsequent year.

For aluminium products, the US set annual import TRQs at 0% tariff of 18,000 metric tonnes "*for unwrought aluminium under two product categories*" and of 336,000 metric tonnes "*for semi-finished (wrought) aluminium under 14 product categories*". The import volumes would also be allocated on an EU Member State basis in line with the historical import values from 2018-2019, except for foil (HS code 7607), "*where 2021 annualized data will be utilized*". Contrary to the TRQ for steel products, the agreement does not provide for an adjustment clause for the TRQ volume of aluminium products.

In turn, the EU agreed to suspend "*the application of the additional ad valorem duties imposed by Implementing Regulations (EU) 2018/886 and (EU) No 2020/502 for a period until 31 December 2023*". This means that the EU will suspend the current rebalancing measures, namely the additional EU tariffs on certain US exports, such as motorcycles, certain clothing items, maize, certain fruit juice, and bourbon, as well as the adoption of additional rebalancing measures that were scheduled to apply from 1 December 2021. Article 1 of *Commission Implementing Regulation (EU) 2021/2083* notes that "*without prejudice to any further suspension, modification, including earlier reinstatement, the duties provided for in Implementing Regulation (EU) 2018/886 shall apply with effect from and including 1 January 2024*".

Finally, the EU and the US agreed "*to suspend by November 5, 2021, pursuant to DSU Article 12.12, the WTO disputes they have initiated against each other regarding the U.S. Section 232 measures (DS548) and the EU's additional duties (DS559)*". In order to "*fully preserve the work of the parties and the panels and procedural steps in these disputes*", the EU and the US agreed to resort to arbitration procedures pursuant Article 25 of the Dispute Settlement Understanding (DSU). The arbitration procedure to be followed is to be agreed by the EU and the US by 17 December 2021. On 5 November 2021, the WTO Panels in the disputes *DS548* and *DS559* informed the disputing parties that they had granted the requests to suspend their work until 17 December 2021. Once the arbitration procedures are agreed, the EU and the US intend to terminate their respective WTO disputes and the arbitration would be suspended

without time limit. In case that either the EU or the US were not comply with the agreement reached, the arbitration proceedings would resume.

A temporary understanding outside of WTO rules?

The EU now joins the list of US trading partners that are exempt from the additional steel and aluminium import tariffs. However, the agreement between the EU and the US raises the question of whether such agreement could be considered a '*Voluntary Export Restraint*' (hereinafter, VER), which is a prohibited trade measure under Article 11 of the WTO Agreement on Safeguards and under Article XI of the General Agreement on Tariffs and Trade (hereinafter, GATT). VERs can be defined as arrangements reached between countries to manage trade, limiting the supply of exports by commodity type, by country, or by volume.

The GATT provides WTO Members with rules that allow to take emergency actions to restrict imports, so-called '*safeguard measures*', when necessary, in order to prevent injury to domestic industries from a '*sudden*' surge of imports. However, VERs are prohibited under WTO law. In the 1970s and 1980s, VERs were commonly used by trading partners as a means to protect domestic industries without having to apply the safeguards *erga omnes* and without having to compensate for the import restrictions. The 1994 WTO Agreement on Safeguards introduced new rules and Article 11 thereof provides that a WTO Member "*shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side*". In more general terms, Article XI.1 of the GATT states that "*no prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas (...), export licences or other measures, shall be instituted or maintained by any contracting party (...) on the exportation or sale for export of any product destined for the territory of any other contracting party*".

On the basis of the agreement with the US, the EU would arguably '*voluntarily*' accept to limit its exports of certain steel and aluminium products. Any exports of the relevant steel and aluminium products outside of the TRQ would "*continue to be subject to a Section 232 duty*" of 25% and 10%, respectively, which would likely mean that the out of quota exports would be very limited. As noted above, the agreement provides for TRQs of 3.3 million metric tonnes for steel products, 18,000 metric tonnes for primary aluminium, and 336,000 metric tonnes for semi-finished aluminium. According to the *Peterson Institute for International Economics*, exports of EU steel products to the US amounted to 4.7 million metric tonnes in 2015, 4 million metric tonnes in 2016, and 4.7 million metric tonnes in 2017. EU exports of aluminium products to the US amounted to 325,000 metric tonnes in 2018 and 410,000 metric tonnes in 2019. Therefore, the TRQs set by the US are below EU export volumes of such products before the additional import tariffs were introduced. Additionally, the agreement imposes strict rules on steel products of EU origin, which must be "*melted and poured*" in the EU in order to be eligible for the TRQ. This rule aims at avoiding that cheaper steel, mainly from China and Russia, be used without substantial transformation in steel products, as this would allow the EU to export at a cheaper price.

With respect to the incompatibility of VERs with Article XI:1 of the GATT, in 1988, the GATT Panel in the dispute *Japan – Semi-conductors* developed criteria to determine whether a measure constitutes a contravention of Article XI of the GATT. In order to determine whether a measure falls within the scope of Article XI of the GATT, the Panel considered that it needed to be satisfied on two essential criteria: 1) Whether there were reasonable grounds to believe that sufficient incentives or disincentives existed for non-mandatory measures to take effect; and 2) Whether the operation of the measures to restrict the export of certain goods was essentially dependent on Government action or intervention. In its report, the Panel noted that "*if these two criteria were met, the measures would be operating in a manner equivalent to mandatory requirements such that the difference between the measures and mandatory requirements was only one of form and not of substance, and that there could be therefore no doubt that they fell within the range of measures covered by Article XI.1*" of the GATT. The TRQs set by the US and agreed with the EU appear to fulfil those criteria, so that the measure can be considered as falling within the scope of Article XI:1 of the GATT. Given the prohibitive

out of quota tariffs, the TRQs can be considered as constituting a voluntary restriction of EU exports of steel and aluminium. Arguably, the agreement between the EU and the US constitutes a VER prohibited by Article 11 of the WTO Agreement on Safeguards and a restriction on exports incompatible with Article XI:1 of the GATT.

Violating multilateral WTO rules to improve bilateral trade relations?

While the *European Steel Industry Association Eurofer* welcomed the agreement, given that EU steel exports to the US had decreased by 40%, the EU aluminium industry regretted the agreement, stating that the industry believed that the TRQs would "*result in even more trade distortions*". The agreement between the EU and the US is a positive signal for EU-US trade relations and an important commercial relief for businesses in the many sectors affected by the additional tariffs and the rebalancing measures, respectively. However, while the agreement provides commercial benefits in the short term, it is highly worrying with respect to the long-term compression of trade and especially in light of the systemic damage that it may do to an already '*suffering*' international trading system.

VERs result in unlawful trade restrictions and discriminatory policies that undermine the WTO rule-based system. It is unfortunate that, for short-term political and commercial gains, the EU and US, which had long been the staunchest supporters of the WTO system and often held the '*high moral grounds*' on the rule of law, are now increasingly resorting to unilateral measures of bilateral deals that further weaken the international trading system.

The EU is still negotiating the apportionment of tariff-rate quotas after '*Brexit*'

The UK's withdrawal from the EU has had a significant impact on trade. One consequence of '*Brexit*' is the need for a new apportionment of the quantitative commitments contained in the EU-28's World Trade Organization's (hereinafter, WTO) Schedule, which provides for 143 agricultural, fish, and industrial tariff-rate quotas (hereinafter, TRQs). On 22 October 2021, the EU submitted a request to the WTO's Council for Trade in Goods seeking an extension of its ongoing TRQ negotiations and consultations with relevant WTO Members to agree on the future apportionment. In parallel, the EU aims at restoring Paraguay's TRQ for high-quality beef to 1,000 metric tonnes, which was erroneously reduced to 711 metric tonnes by the EU's Regulation on the re-apportionment of the EU's TRQs post-'*Brexit*'.

WTO Members take issue with the post-'Brexit' TRQ apportionment

TRQs determine the quantities of goods that may be imported duty-free or at a lower tariff, referred to as the in-quota rate. Once the quota is filled, the regular higher tariff applies, which is referred to as the out-of-quota rate. TRQs are particularly important with respect to agricultural and fishery products and in order to limit competition for domestic producers. In view of the often wide gap existing between the in-quota and the out-of-quota tariff rates, the TRQ allocation is of key importance for trading partners and domestic industries. In the WTO, the EU-28 made quantitative commitments contained in the EU-28's WTO Schedule of Concessions, which contains 143 agricultural, fish, and industrial TRQs.

On 29 March 2017, the Government of the UK notified the EU of the UK's intention to withdraw from the EU. The UK's withdrawal from the EU led to the need to re-apportion the quantitative commitments contained in the EU-28's WTO Schedule for the EU's 143 agricultural, fish and industrial WTO TRQs. The EU initiated this process of re-apportionment in October 2018 and, in early 2019, the EU published *Regulation (EU) 2019/216 of the European Parliament and of the Council of 30 January 2019 on the apportionment of tariff rate quotas included in the WTO schedule of the Union following the withdrawal of the United Kingdom from the Union, and amending Council Regulation (EC) No 32/2000*, which implements into EU law the agreement reached with the UK in 2017 on how to apportion the EU-28 WTO TRQs between the EU and the UK. The approach pursued by the EU and the UK was to fully maintain the existing volume

of each TRQ in the future, but to split it across two separate Customs territories: the EU-27 and the UK. The agreed methodology to determine the new apportionment is described in detail in *Regulation (EU) 2019/216*: 1) The UK's usage share (*i.e.*, the UK's share of total EU imports under the TRQ over a recent representative period of three years) for each individual TRQ is established; 2) The usage share is then applied to the entire scheduled TRQ volume so as to arrive at the UK's share of a TRQ; and 3) The EU's share then consists of the remainder of the TRQ in question, which ensures that the total volume of a given TRQ vis-à-vis other WTO Members is not changed.

Initially, the EU and the UK had considered the new apportionment of the TRQs between the EU and the UK to be a mere adaptation of the WTO Schedule to the new post-'*Brexit*' situation and had intended to adjust their Schedules without engaging in lengthy renegotiations under Article XXVIII of the GATT on the '*Modification of Schedules*' (see *Trade Perspectives*, Issue No. 21 of 16 November 2018). Following the EU's and the UK's *Joint Communication* to WTO Members in October 2017, providing the plans for the '*Brexit*' transition and the intended approach for the apportionment of the TRQs, some WTO Members and major exporters of agricultural products (*i.e.*, Argentina, Brazil, Canada, New Zealand, Thailand, the US, and Uruguay) criticised the EU-UK recalculation and reallocation of TRQs, in particular in relation to the TRQs for meat products, arguing that the intended changes were more than a mere rectification of the Schedules, which would lead to decreased flexibility, and would affect market access for their exporters.

The affected WTO Members further noted that, if market access conditions were to change due to the proposed TRQ re-apportionment, additional concessions were needed to compensate for the loss of market access. The affected WTO Members concluded that modifications of the EU's and UK's WTO commitments should only be adopted following negotiations and agreement reached with affected WTO Members. Therefore, on 26 June 2018, the Council of the EU authorised the Commission to open formal negotiations within the WTO on how to apportion the existing EU's TRQs between the EU-27 and the UK. *Regulation (EU) 2019/216* provides that the "*apportionment of tariff rate quotas that are part of the schedule of concessions and commitments of the Union will have to occur in accordance with Article XXVIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994)"* and that the EU would*, "therefore, following completion of preliminary contacts, engage in negotiations with WTO Members having a principal or substantial supplying interest or holding an initial negotiating right in relation to each of these tariff rate quotas".*

The EU's progress in the negotiations for the re-apportionment of TRQs

Due to the tight timeframe until the UK's official withdrawal from the EU and the possibility that negotiations between the EU and certain WTO Members on apportioning the EU's TRQs would not be completed by 31 December 2020, when the transition period ended and the UK effectively left the EU Single Market and EU Customs Union, *Regulation (EU) 2019/216* provided for a unilateral re-apportionment of the TRQs. Negotiations with certain WTO Members, relating to the apportionment of the EU TRQs, continued in parallel to the application of *Regulation (EU) 2019/216*. On 8 March 2021, the EU and the US concluded negotiations to adjust the EU's WTO TRQs for certain agricultural products. According to the Commission, the agreement with the US covers a multitude of TRQs, including those for beef, poultry, rice, dairy products, fruits and vegetables, and wine. The EU has already concluded similar TRQ re-apportionment negotiations with, *inter alia*, Argentina, Australia, Norway, Pakistan, Thailand and Indonesia, and is still conducting negotiations with 21 further trading partners having rights to access these quotas.

Regarding the timelines for negotiating modifications to WTO Schedules of Commitments, Article XXVIII:3 of the GATT 1994 provides that affected WTO Members that do not agree to the modification of the concessions *"shall be free to withdraw substantially equivalent concessions initially negotiated with the applicant Member*" and that the affected WTO Members must do so "*not later than six months after such action is taken"* and *"upon the expiration of thirty days from the day on which written notice of such withdrawal is received by*

the Members". The affected WTO Members, were, therefore, required to wait six months after the entry into force of *Regulation (EU) 2019/216*, namely from 1 January 2021, to exercise their rights under Article XXVIII:3 of the GATT 1994. At the meeting of the WTO Council for Trade in Goods of 31 March and 1 April 2021, the EU noted that "*there are several negotiating and consultation partners with whom there are very good prospects of closing negotiations or consultations successfully and advancing towards the initialling of draft agreements"* and the EU requested the WTO Council for Trade in Goods to extend the timelines under Article XXVIII:3 of the GATT 1994 until 1 January 2022. On 22 October 2021, the EU submitted another request to the WTO Council for Trade in Goods to extend the timelines under Article XXVIII:3 by another six months until 1 July 2022, noting "*that the conclusion of the ongoing negotiations and consultations should not be impeded by the timelines of Article XXVIII:3(a) and (b)"*. The EU stated that more time was required *"for substantive or procedural reasons including domestic procedural requirements for the formal conclusion of agreements under Article XXVIII of GATT 1994".*

The concerns with Paraguay's TRQ for high-quality beef

In addition to the broader issue of the EU's negotiation with certain WTO Members regarding the TRQs re-apportionment, a particular issue concerns Paraguay's TRQ for high-quality beef. On 27 June 2002, the EU adopted *Council Regulation (EC) No 1149/2002 of 27 June 2002 opening an autonomous quota for imports of high-quality beef*, through which it opened*, "as an autonomous measure, a Community import tariff quota of 1000 tonnes of high-quality fresh, chilled or frozen beef*". According to the Commission, after '*Brexit*', this import quota was erroneously included in the re-apportionment of the EU's WTO TRQs under *Regulation (EU) 2019/216*, although it was not part of the EU's WTO Schedule. This error affected Paraguay's TRQ for high-quality beef, which was reduced from 1,000 metric tonnes to 711 tonnes for the EU-27, without any corresponding volume being opened on the UK side since, originally, Paraguay's TRQ was not part of the EU-28 WTO TRQs.

On 18 June 2021, the Commission published its *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/216 of the European Parliament and of the Council as regards Union tariff rate quota for high quality beef from Paraguay*, seeking to amend *Regulation (EU) 2019/216* to restore Paraguay's TRQ for high-quality beef to 1,000 metric tonnes. As part of the legislative process, on 26 October 2021, the European Parliament's INTA Committee tabled its Report on the proposed Regulation. In essence, the Members of the European Parliament (hereinafter, MEPs) were in favour of the Commission's proposed Regulation, though some MEPs expressed concerns that EU quotas for beef affect competition in the EU market to the detriment of EU beef producers. On 29 November 2021, the INTA Committee adopted its report on the proposed Regulation, which will now be submitted for adoption by the European Parliament's plenary.

Important implications for businesses

Finding acceptable agreements on the remaining TRQs with trading partners remains one of the issues following '*Brexit*', with important implications for trade. In the coming months, the European Parliament and the Council of the EU will also have to reach agreement on the proposed Regulation on high-quality beef from Paraguay. More importantly, negotiations between the EU and relevant WTO Members affected by *Regulation (EU) 2019/216* regarding the apportionment of the EU's post '*Brexit*' TRQs are still ongoing, but should be concluded by the summer of 2022. Those benefitting from the EU's TRQs should closely monitor the related developments and engage with their Governments in order to ensure that the future EU and UK TRQs do not lead to a negative market access impacts.

New EU import conditions for composite food products as of 15 March 2022: Towards a "*more risk-based approach*"

Since 21 April 2021, new EU import conditions for composite products apply on the basis of *Commission Delegated Regulation (EU) 2019/625 of 4 March 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of certain animals and goods intended for human consumption*. A transitional period until 15 March 2022 has been granted for consignments of composite products, during which the previous import certificates are still accepted for such products to enter the EU. This article analyses the changes to EU legislation on official controls and animal health, and looks at the example of pie exports from the UK to the EU.

Definition of composite products and examples

A '*composite product*' is defined in point 14 of Article 2 of *Commission Delegated Regulation (EU) 2019/625* as "*food containing both products of plant origin and processed products of animal origin*". The *Food Safety Authority of Ireland* (FSAI) states that "*examples of composite products include cheese and ham pizza, salmon and broccoli quiche, mayonnaise (made with pasteurised egg). If the animal product ingredient is not processed (e.g. raw meat in a pie, honey with nuts), then the food is not a composite product but is a food of animal origin*". Articles 1(2) and 6(4) of *Regulation (EC) No 853/2004 laying down specific hygiene rules for food of animal origin* require composite products to be manufactured with processed products of animal origin produced in EU-approved establishments located either in EU Member States or in third countries authorised to exports to the EU such processed products of animal origin.

New official control rules for composite products

The rules for the entry of composite products onto the EU market are provided in Articles 12 to 14 of *Commission Delegated Regulation (EU) 2019/625*. The Commission notes that "*such rules are proportionate to the risk presented by composite products*" and the Commission *Delegated Regulation (EU) 2019/625* differentiates among three different categories of composite products in descending order of "*risk*": 1) Not shelf-stable composite products (*i.e.*, products that need to be transported or stored under controlled temperature, which is not the case for shelf-stable composite products that can be kept at ambient temperature, Article 12); 2) Shelf-stable products containing meat products, except for gelatine, collagen, or highly refined products derived from meat (Article 13); and 3) Shelf-stable products not containing meat products, except for gelatine, collagen, or highly refined products derived from meat (Article 14). All processed ingredients of animal origin contained in products falling under these three categories of composite products must come from establishments approved by the EU and located in countries authorised to export such processed products of animal origin to the EU

The important difference within the three categories lies in the certificates required at importation. The entry into the EU of not shelf-stable composite products (category 1) and shelf-stable composite products, containing any quantity of meat products except gelatine, collagen, and highly refined products, and intended for human consumption (category 2), requires an "*animal health/official certificate*" corresponding to the model COMP drawn up in accordance with the model set out in Chapter 50 of Annex III of *Commission Implementing Regulation (EU) 2020/2235 of 16 December 2020 laying down rules for the application of Regulations (EU) 2016/429 and (EU) 2017/625 of the European Parliament and of the Council as regards model animal health certificates, model official certificates and model animal health/official certificates, for the entry into the Union and movements within the Union of consignments of certain categories of animals and goods, official certification regarding such certificates*. A "*model private attestation*" by the operator is required for the entry of products of the third category of composite products, namely for shelf-stable composite products containing processed products of animal origin other than processed meat in accordance with Article 14 of *Commission Delegated Regulation (EU) 2019/625*, which correspond to the model

set out in Annex V of *Commission Implementing Regulation (EU) 2020/2235.* According to the Commission, "*the relevant list of third countries from which composite products may enter the EU is read in the context of the list establishing third countries authorised to export to the EU meat products, fishery products, dairy and colostrum based products and egg products. In addition, Commission Decision 2011/163/EU is relevant with regard to the monitoring of residues in animal products and such animal products, when processed, end up in composite products*".

In the case of composite products presenting a lower risk, *Commission Delegated Regulation (EU) 2021/630 of 16 February 2021 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards certain categories of goods exempted from official controls at border control posts* grants an exemption from official controls to such composite products at border control posts. Instead, such official controls should be performed at the place of destination, the point of release for free circulation, or the warehouses or premises of the operator responsible for the consignment of the composite product.

Rationale for the changes to the import requirements for composite products

Since 21 April 2021, the import requirements for composite products are no longer based on the percentage of the processed products of animal origin in the composite product, but rather on the animal health or public health risk linked to those ingredients of animal origin and on the need to transport or store composite products under controlled temperature conditions. In the past, all composite products that were considered as being a risk from an animal health point of view (in general terms, those containing any quantity of meat and those containing 50%, or more, of milk, fish and/or eggs) were covered by *Commission Decision 2007/275/EC of 17 April 2007 concerning lists of animals and products to be subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78/EC*. *Decision 2007/275/EC* provided for derogations for a number of composite products or foodstuffs exempting them from veterinary checks. Those products are listed in Annex II of the Decision and include products such as *"Confectionery (including sweets) and chocolate, containing less than 50 % of processed dairy and egg products"* or "*olives stuffed with more than 20 % fish*".

The Commission notes that the new rules for composite products were adapted using a more "*risk-based approach*" relying on principles such as shelf-stability and the presence of meat in the products (which might pose an animal health risk), and no longer based on the percentage of the processed products of animal origin. This approach takes into account the 2012 Scientific Opinion of the *European Food Safety Authority* (EFSA) on *Public health risks represented by certain composite products containing food of animal origin*, which stated, *inter alia*, that the "*Categorisation of the risk for composite products requires information on their composition, processing and further handling, which can largely differ for foods belonging to the same category. […], some of the categories of composite products include foods with different levels of risk (e.g. bakery products, cakes and confectionery), since the composition and processing of some of them may allow for the survival and growth of pathogenic microorganisms while others may not. Further conditions may influence the risk and should be verified, i.e. hygienic conditions during preparation of the composite products and their ingredients, shelf-life conditions, and reliability of cooking by consumers to inactivate pathogens*".

Transition to the new rules

With a view to facilitate the transition, Article 35 of *Commission Implementing Regulation (EU) 2020/2235* introduced a transitional period of six months for consignments of composite products, during which the previous certificate is still accepted for the products to be allowed to enter the EU. Where no certificate was required prior to 21 April 2021, the new relevant certificate or private attestation is to be provided. In order to avoid any unnecessary disruptions in trade, *Implementing Regulation (EU) 2021/1329 of 10 August 2021 amending Implementing Regulations (EU) 2020/2235, (EU) 2020/2236, (EU) 2021/403 and (EU) 2021/404 as regards extending the transitional period for the use of animal health certificates, animal health/official*

certificates and official certificates required for the entry into the Union of certain consignments extends the transitional period to 15 March 2022, provided that the relevant certificate is signed before 15 January 2022 by the person authorised to sign it.

New animal health rules on colostrum, gelatine, and collagen contained in composite products

Commission Delegated Regulation (EU) 2020/692 of 30 January 2020 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council as regards rules for entry into the Union, and the movement and handling after entry of consignments of certain animals, germinal products and products of animal origin supplements the animal health rules laid down in *Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law')*, as regards the entry into the EU, and the movement and handling after entry into the EU, of consignments of certain animals, germinal products and products of animal origin. In particular, Articles 162 and 163 of *Delegated Regulation (EU) 2020/692* lay down specific requirements for the entry into the EU of products of animal origin contained in composite products. Articles 162 and 163 of *Delegated Regulation (EU) 2020/692* did not originally provide the specific requirements for colostrum-based products contained in composite products. Colostrum refers to the first form of milk produced by the mammary glands of mammals immediately following delivery of the new-born.

Therefore, on 13 July 2021, the Commission adopted *Delegated Regulation (EU) 2021/1703 amending Delegated Regulation (EU) 2020/692 as regards the animal health requirements for the entry into the Union of products of animal origin contained in composite products*, which clarified the requirements that apply for the entry into the EU of those products when contained in composite products in accordance with the rules applicable to the entry into the EU of colostrum-based products provided for in Article 153 of *Delegated Regulation (EU) 2020/692*. Gelatine and collagen fall within the definition of '*meat products*' provided for in Article 2, point 44, of *Delegated Regulation (EU) 2020/692* and, therefore, only consignments of gelatine and collagen complying with the requirements for entry into the EU of meat products are permitted to enter the EU. Since gelatine and collagen contained in shelf-stable composite products pose a very low animal health risk, due to the treatments that they undergo during their processing, composite products containing only these kind of meat products were added to the list of composite products covered by the derogation provided for in Article 163 of *Delegated Regulation (EU) 2020/692* and, therefore, are not required to be accompanied by an animal health certificate, but only by a "*model private attestation*".

The practical consequences of 'Brexit' and the outlook

According to media reports, "*pies made in the UK will be banned from export to the EU if their ingredients do not come from an approved farm or factory*". According to media reports, a former UK Trade Minister raised concerns about the exports of "*chicken, ham and mushroom pies*". While pies can be composite products when the animal product in the pie is processed, they are animal products when the meat is raw. The new requirements for UK pie exports is, essentially, a consequence of '*Brexit*'. Under the Trade and Cooperation Agreement (TCA) between the EU and the UK, sanitary and phytosanitary (SPS) requirements are no longer harmonised and UK agri-food exporters have to meet all of the EU's SPS import requirements, such as the requirement that products of animal origin be produced in EU-approved establishments, and be subject to official controls carried out by EU Member States' authorities at Border Control Posts. However, the UK's *Department for Environment, Food and Rural Affairs* reportedly stressed that, if EU rules are complied with, "*meat pies can still be exported to the EU*" and that "*businesses should be listed as "approved establishments", as has been the case since the start of this year, and more than 6,000 GB businesses are listed*". Interested stakeholders are advised to monitor the developments and should be prepared to navigate the complex new EU rules on the importation of composite products, which apply to imports into the EU.

Recently adopted EU legislation

Trade Law

- *Commission Delegated Regulation (EU) 2021/2126 of 29 September 2021 amending the Annex to Regulation (EU) 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Union*

- *Council Decision (EU) 2021/2111 of 25 November 2021 on the position to be taken on behalf of the European Union, under the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, as regards the establishment of a Working Group on Fisheries and the adoption of its rules of procedure*

Customs Law

- *Commission Delegated Regulation (EU) 2021/2127 of 29 September 2021 amending Annex IV to Regulation (EU) No 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences*

Food Law

- *Commission Implementing Regulation (EU) 2021/2129 of 2 December 2021 authorising the placing on the market of calcium fructoborate as a novel food under Regulation (EU) 2015/2283 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) 2017/2470 (1)*

- *Commission Implementing Regulation (EU) 2021/2107 of 26 November 2021 amending Annexes V and XIV to Implementing Regulation (EU) 2021/404 as regards the entries for the United Kingdom in the lists of third countries authorised for the entry into the Union of consignments of poultry, germinal products of poultry and fresh meat of poultry and game birds (1)*

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