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An important step towards enhanced trade relations: Thailand and the EU resume negotiations for a preferential trade agreement

From 18 to 22 September 2023, the EU and Thailand held the first round of the resumed trade negotiations for the EU-Thailand Free Trade Agreement (hereinafter, FTA) in Brussels. Earlier this year, on 15 March 2023, the EU and Thailand had announced their intention to relaunch negotiations for “*an ambitious, modern and balanced free trade agreement (FTA), with sustainability at its core*”. An EU-Thailand FTA would deepen EU-Thailand relations, but also the EU's relationship with the Association of Southeast Asian Nations (hereinafter, ASEAN). Providing both sides with important market access opportunities, the FTA would be an important step for Thailand to regain a level playing field vis-à-vis some of its ASEAN competitors that already enjoy preferential market access to the EU, such as Singapore and Viet Nam.

Finally resuming negotiations

Negotiations for a preferential trade agreement between the EU and Thailand had started in 2013, but were suspended in 2014 due to the political situation in Thailand. In March 2019, Thailand held general elections, which the EU considered to be an important development on the path to improved relations. Thailand's then new Government made several attempts to resume the trade negotiations and, in July 2019, Thailand's then Deputy Prime Minister, *Somkid Jatusripitak*, and the country's Minister of Commerce, *Jurin Laksanavisit*, had announced that Thailand intended to relaunch FTA negotiations with the EU. In September 2019, the EU's Ambassador to Thailand, *Pirkka Tapiola*, recognised the intentions of the Government of Thailand and underlined that he was confident that negotiations could restart soon. At the end of 2020, the resumption of negotiations for an EU-Thailand FTA gathered further *momentum* and both parties were discussing internally whether the resumption of trade negotiations could be possible in 2021 (see *Trade Perspectives*, Issue No. 11 of 4 June 2021). On 14 December 2022, at the side-lines of the EU-ASEAN Commemorative Summit held in

Brussels, the EU and Thailand signed the [EU-Thailand Partnership Cooperation Agreement](#), which represented a significant milestone in both parties' bilateral relations. The EU-Thailand PCA recognises the importance of enhanced cooperation in various important areas such as trade, investment, agriculture, climate change and energy, based on the principles of “*dialogue, mutual respect, equal partnership, consensus and respect for international law*” (see [Trade Perspectives, Issue No. 1 of 16 January 2023](#)). Following the signing of the EU-Thailand PCA, relaunching negotiations for an ambitious and comprehensive FTA was the logical next step.

The relaunch of trade negotiations

On 15 March 2023, the EU and Thailand finally [announced](#) the relaunch of negotiations “*for an ambitious, modern and balanced free trade agreement (FTA), with sustainability at its core*”. The increasing importance of the Indo-Pacific region in global trade and economic activity, coupled with Thailand's status as the second-largest economy in South-East Asia, contributed to the EU's interest in forging “*deeper ties*” with Thailand and “*further strengthening the EU's strategic engagement with this burgeoning region*”. In view of the relaunch of the negotiations, Thailand's Minister of Commerce at the time, [Jurin Laksanavisit](#), stated that “*a Thai-EU FTA would cover trade in goods, services and investment, proving mutually beneficial*”.

Thailand is an important market for the EU, and *vice versa*. According to the European Commission (hereinafter, Commission), in 2022 total bilateral trade in goods amounted to EUR 42 billion, while in 2020 the total trade in services had a value of more than EUR 8 billion. The EU is Thailand's fourth largest trading partner after China, Japan, and the US, accounting for 7.5% of the country's total trade, while Thailand is the EU's 25th largest trading partner worldwide and the EU's fourth most important trading partner within ASEAN. In 2022, Thailand's exports to the EU had an overall value of EUR 27,2 billion, with the most important product categories of exports to the EU being machinery, electronics, transport equipment, miscellaneous manufactured articles, and food products. The EU exported goods with a total value of EUR 14,8 billion in 2022 to Thailand, with the key export products being machinery and transport equipment, chemicals, and manufactured goods.

According to the Commission, the agreement intends “*to boost trade and investment by addressing a wide range of issues such as: market access for goods, services, investment and government procurement; swift and effective Sanitary and Phyto-Sanitary procedures; the protection of intellectual property rights including Geographical Indications, and the removal of obstacles to digital trade and trade in energy and raw materials, thereby supporting the digital and green transitions*”. The Commission further stated that sustainability would be at the “*heart*” of the agreement, “*with robust and enforceable disciplines on Trade and Sustainable Development (TSD)*”, aligned with the “[Commission's TSD review Communication of June 2022](#), supporting high levels of protection for workers' rights, for the environment, and the achievement of ambitious climate goals”.

The first round to set the stage for swift negotiations

Negotiations were practically relaunched in September 2023, with the first round having taken place in Brussels from 18 to 22 September 2023. On 29 September 2023, the Commission published its [report](#) on the first round of negotiations for the *EU-Thailand FTA*. According to the report, the first round of negotiations “*focused on clarifying each sides' positions, covering the full range of areas under the scope of the future agreement, with 20 negotiating groups meeting during the week*”. Twenty negotiating areas were covered, including trade in goods, rules of origin, technical barriers to trade, government procurement, intellectual property, energy and raw materials (ERM), digital trade, and trade and sustainable development (TSD). The report notes that the negotiating groups “*engaged in the first reading and held discussions*” on the text proposals that the EU had tabled ahead of the trade negotiations. Meanwhile, in areas that were not covered in the proposals submitted by the EU, both Parties “*had a more principle-based first exchange of views, further to which the EU will table the remaining text proposals*”. Following the first round of trade negotiations, all negotiating groups would carry

out intersessional work “to prepare the ground for engaging in text-based negotiations during the 2nd round”.

Challenges and opportunities

The EU and Thailand aim at agreeing on a modern and comprehensive agreement and various trade-related issues of negotiation look poised to be both complex and controversial, such as sustainability, human rights, digital trade, renewable energy, State-owned enterprises, and raw materials. Additionally, negotiations to improve market access will be key and Thailand will likely aim at obtaining enhanced EU market access for agricultural products, such as rice, poultry and sugar, and agri-food products, as well as for vehicles.

In terms of its fisheries sector, Thailand should use the opportunity of the negotiations to achieve both enhanced market access and recognition for its important progress in combating illegal, unreported and unregulated (hereinafter, IUU) fishing. The issue of IUU fishing is typically addressed in the chapters on trade and sustainable development (see *Trade Perspectives, Issue No. 20 of 1 November 2019*), for which the EU will pursue the inclusion of an enforcement mechanism with the possibility of sanctions as a last resort, namely in case of a breach of provisions on core labour rights and trade and climate change, and in the event of an activity by the trading partner that would defeat the purpose of the Paris Agreement.

Businesses in Thailand and across the EU have long supported the negotiation of an EU-Thailand FTA, albeit with diverse and sometimes diverging interests. EU businesses have voiced interests, *inter alia*, with respect to improved market access for certain key export products like food, beverages, motor vehicles, and services, enhanced commitments on renewable energy and environmental goods, as well as access to Thailand’s Government procurement market. In the context of trade and sustainable development, labour rights are a concern, with businesses calling for Thailand to ratify specific International Labour Organisation (ILO) Conventions before the FTA’s entry into force. Thailand’s previous Minister of Commerce, *Jurin Laksanavisit*, noted that “*Thailand is expected to greatly benefit from the pact once the tariff on Thai exports to the 27 EU countries is eliminated, giving Thailand a competitive edge compared with countries that do not have an FTA with the EU*”. Minister *Laksanavisit* had further noted that “*The specific sectors that should benefit are automobiles and components, electronic equipment, textiles, food, rubber, chemicals and plastics*” and that “*The import of raw materials would see tariffs eliminated, allowing the manufacturing sector in Thailand to reduce production costs, particularly for machinery, equipment and chemicals*”. These diverse interests highlight some of the complexities that both parties will have to navigate to achieve a balanced, modern, and comprehensive trade agreement.

The European Commission’s Executive Vice-President and European Commissioner for Trade, *Valdis Dombrovskis*, welcomed the relaunch of the negotiations and noted, *inter alia*, that “*a modern and dynamic FTA would lead to benefits for both sides, and strengthen EU trade ties with the Indo-Pacific region*”. He stated that “*open trade is one of the pillars of our Green Deal Industrial Plan, aiming to increase the EU’s global competitiveness*”. Commissioner *Dombrovskis* concluded that “*pursuing important new deals such as*” the EU-Thailand FTA would be “*crucial*” to the EU’s “*success*” and the EU aimed “*to advance quickly with the negotiations*”. Thailand’s then Minister of Commerce, *Jurin Laksanavisit* stated that it was “*a historic day for the two parties, Thailand and the 27 countries of the EU, to officially start the first step of negotiations for a free trade agreement after trying for almost 10 years and aiming to complete within two years by 2025*”.

Time to engage

The potential of a future EU-Thailand FTA to enhance market access, and boost competitiveness should serve as a compelling rationale for the EU and Thailand to expedite the negotiations. The second round of trade negotiations is scheduled to be held during the week of 22 January 2024 in Thailand. While the EU and Thailand’s aspiration to reach a trade agreement within two years is certainly commendable, it may also be overly ambitious given

the complexities involved. Interested stakeholders, including industry representatives and businesses, should play an active role and ensure that their interests are adequately considered during the negotiations to make the most out of the future improved and preferential market access conditions.

Indonesia officially launches its first carbon exchange market: Concrete commitments to achieve its climate goals

On 2 August 2023, the Government of Indonesia enacted its *Financial Services Authority Regulation Number 14 of 2023* (hereinafter, POJK 14/2023), which serves as the legal basis for the implementation of Indonesia's carbon exchange market. On 6 September 2023, the Financial Services Authority issued *Circular Letter of the Financial Services Authority of the Republic of Indonesia Number 12/SEOJK.04/2023 concerning Procedures for Organizing Carbon Trading Through the Carbon Exchange*, which provides the technical rules for the implementation of POJK 14/2023. Through the establishment of the carbon exchange market, carbon units, which refer to the certificates that show how much carbon dioxide has been reduced or emitted, are categorised as securities and are now tradable financial instruments on the market. On 26 September 2023, the President of Indonesia, *Joko Widodo* (Jokowi) officially launched the carbon exchange market and stated that "*the start of carbon trading is Indonesia's real contribution to fighting the climate change crisis*".

Indonesia's carbon initiatives

In an effort to achieve its *Nationally Determined Contribution* (NDC) targets that were submitted to the *United Nations Framework Convention on Climate Change* (UNFCCC), and to reduce greenhouse gas (GHG) emissions, on 29 October 2021, the Government of Indonesia had issued *Presidential Regulation No. 98 of 2021 on the Implementation of Carbon Economic Value for Achieving Nationally Determined Contribution Targets and Control of Greenhouse Gas Emissions in National Development* (hereinafter, PR 98/2021), which foresaw the introduction of a mechanism of carbon trading and taxes on carbon emissions (see *Trade Perspectives*, Issue No. 16 of 5 September 2022). PR 98/2021 introduced, *inter alia*, a carbon trading mechanism through a cap-and-trade system, which mandates the establishment of a system for emissions trading between entities. PR 98/2021 is one of the legal bases for the issuance of POJK 14/2023.

Carbon trade in Indonesia

Under the cap-and-trade system, entities that produce emissions in excess of the required emission cap, which is set by the Government, must purchase an *Emission Permit Certificate* (i.e., *Sertifikat Izin Emisi*, SIE) from other entities whose emissions are below the cap, or purchase an *Emission Reduction Certificate* (i.e., *Sertifikat Penurunan Emisi*, SPE) (see *Trade Perspectives*, Issue No. 21 of 19 November 2021). As stipulated under Article 54 of PR 98/2023, carbon credits can be traded through: 1) The carbon exchange market; or 2) Direct trading from business to business. Direct trading has been implemented in the coal-fired power plant sector and, in this context, in February 2023, Indonesia's Ministry of Energy and Mineral Resources launched the first phase of mandatory carbon trading for coal-fired power plants, which was carried out by 99 power plants owned by 42 different companies.

Overview of POJK 14/2023

Indonesia's carbon exchange market was launched to facilitate the trade of carbon units for any activity that emits GHG emissions, allowing companies to purchase carbon units from other companies that dispose of spare carbon credits. In essence, both the POJK 14/2023 and *Circular Letter No. 12/SEOJK.04/2023*, provide the requirements on licensing and investment, as well as the obligations of *Carbon Exchange Operators*, which refers to companies that provide the platform for the operation of the carbon exchange market. In this context, the first

and (currently) only *Carbon Exchange Operator*, approved by Indonesia's Financial Services Authority is the *Indonesia Stock Exchange*, which has established a carbon-specific trading platform called *IDXCarbon*. *POJK 14/2023* and *Circular Letter No. 12/SEOJK.04/2023* also provide certain conditions on how to trade carbon units on Indonesia's carbon exchange market. Most notably, the *POJK 14/2023* clarifies the definition of "carbon units" and provides the requirements to trade in the carbon exchange market, notably the registration requirements for carbon units. All carbon trading takes place on Indonesia's carbon exchange and is overseen by Indonesia's *Financial Services Authority*, who is responsible for regulating permits, monitoring, and developing the carbon trade in Indonesia's carbon exchange market.

Pursuant to Article 3 of the *POJK 14/2023*, a carbon unit, which refers to the proof of carbon ownership in the form of a certificate or technical approval in the amount of 1 metric tonne of carbon dioxide, is categorised as a security and can be traded in Indonesia's carbon exchange market. In order for a carbon unit to be traded in the carbon exchange market, it must be registered with: 1) The National Registry System for Climate Change Control, which refers to a system established by Indonesia's Ministry of Environment and Forestry that manages and provides data and web-based information on climate-related actions; and 2) The Carbon Exchange Operator, which is the *Indonesia Stock Exchange*. According to the *Indonesia Stock Exchange*, the registration through the system would "make it easier to administer the transfer of carbon units and avoid double counting".

The *IDXCarbon* offers four features for carbon trading, namely: 1) Regular trading, which follows the same system as the stock exchange market, where buyers and sellers can submit their offers and purchase in real time; 2) Auctions, where sellers can sell their carbon units through an auction and prospective carbon unit buyers must submit their purchase requests of desired volume and price; 3) Negotiated trading, where parties that have an agreement on the sale of carbon units outside of the carbon exchange market can conduct their transactions through the carbon exchange market; and 4) Marketplace, where sellers can sell their carbon units at a predetermined price.

Currently, carbon trading in Indonesia's carbon exchange market is still voluntary and may become mandatory when the Government of Indonesia were to impose stricter rules for specific sectors. The President-Director of the *Indonesia Stock Exchange*, *Iman Rachman*, stated that Indonesia's carbon exchange market could be used by businesses that have pledged to reach net-zero emissions, as well as those with environmental, social, and governance commitments. The price of carbon units in the market varies depending on the supply and demand.

Significance of Indonesia's carbon market

As a country that still heavily relies on coal, Indonesia has a long way to go in order to decrease its GHG emissions. However, President *Jokowi* noted that Indonesia had great potential to trade GHG emissions in the carbon exchange market, which, at the same time, would incentivise the reduction of such emissions. President *Jokowi* stated that Indonesia had approximately 1 gigaton of carbon credit potential and, when traded in the financial market, Indonesia's carbon market potential would stand at IDR 3,000 trillion (*i.e.*, USD 194 billion).

Following the launch of Indonesia's first carbon exchange market on 26 September 2023, 13 carbon transactions took place on the first day, which corresponded to 459,000 metric tonnes of carbon being traded at IDR 69,600 or USD 4.51 per metric tonne. As carbon trade for the coal-fired power plant sector is already mandatory, the Chairman of Indonesia's Financial Services Authority, *Mahendra Siregar*, stated that the Authority hoped that all 99 coal-fired power plants, which correspond to 86% of operating coal-fired power plants in the country, would join the carbon exchange market.

Reactions from businesses

The launch of Indonesia's carbon exchange market has been welcomed by businesses and business associations. According to the Indonesian Chamber of Commerce and Industry, the carbon exchange market would have a positive impact on the reduction of emissions in Indonesia. Still, the Head of the Net Zero Hub within the Indonesian Chamber of Commerce and Industry, *Dharsono Hartono*, noted that collaboration between the Government and the private sector was needed in order to “*create more projects that are traded on the domestic carbon market and increase the competitiveness of local companies in the global market*”.

The EU's Emissions Trading System and Carbon Border Adjustment Mechanism

Already back in 2005, in order to reduce carbon emissions, the EU had launched its Emissions Trading System (hereinafter, ETS). The EU's ETS is based on a cap-and-trade mechanism, which imposes a restriction on the amount of GHG emissions that specific sectors may emit. As the EU's ETS does not apply to products produced in other countries and imported into the EU, the EU has recently introduced a Carbon Border Adjustment Mechanism (hereinafter, CBAM). The CBAM aims at reducing the risk of “*carbon leakage*”, which refers to the practice of transferring production to countries with less stringent emissions regulations, by encouraging non-EU businesses to “*green*” their production processes.

The CBAM will require EU importers to purchase carbon certificates corresponding to the carbon price that the imported items would have paid under the EU's ETS carbon price rules. The CBAM will cover products in some of the most carbon-intensive sectors at risk of ‘*carbon leakage*’, namely cement, electricity, fertilisers, iron and steel, aluminium, hydrogen, as well as indirect emissions under certain conditions, certain precursors, and downstream products, such as screws and bolts (see *Trade Perspectives, Issue No. 9 of 8 May 2023*). On 1 October 2023, the EU's CBAM entered its transitional phase, requiring importers of covered products to report the volume of their imports and the GHG emissions emitted during their production, without paying any financial adjustment. The financial adjustment will only become due from 2026. Other countries, such as Australia, are reportedly interested in implementing their own carbon border taxes.

Once fully applied, the EU's CBAM would have an impact on Indonesia's exports to the EU, notably of iron and steel exports, as the sector accounts for 5% of Indonesia's exports to the EU. For instance, according to Indonesia's Ministry of Trade, the EU's CBAM could result in a 16.8% increase in the tariff rate for Indonesia's iron and steel exports to the EU. Based on the principle of equivalence, Article 9 of the EU's CBAM Regulation foresees that, if a trader can prove that the foreign manufacturer has paid a price for the carbon used in the manufacture of the imported goods in a third country, the costs spent can be deducted. The European Commission further elaborated that an example of a carbon price paid in a third country could “*be due to an established Emissions Trading System*”. The specific conditions to take into account the carbon price paid in third countries still needs to be developed by the European Commission before the end of the CBAM's transitional period (*i.e.*, before 2026). Article 2(12) of the CBAM Regulation states that the EU may conclude agreements with third countries or regions to take into account the respective carbon pricing mechanism based on the principle of “*equivalence*”.

Indonesia's preparation to comply with the EU's CBAM

To ensure compliance with the EU's CBAM, the Government of Indonesia stated that they are in the process of finalising their carbon tax regulation, which is expected to be developed to anticipate the EU's CBAM. According to the Coordinating Minister for Economic Affairs of Indonesia, *Airlangga Hartarto*, “*The regulations will be completed, partly because Europe will implement CBAM in 2026. In 2024, they will be in the socialization phase, which means our industry must be ready to become a green energy base and a clean industry—and that requires investment*”.

Towards future cooperation and mutual recognition with other countries?

Following the launch of the carbon exchange market, Indonesia is reportedly interested in cooperating with other countries. Indonesia's Coordinating Minister of Maritime and Investment Affairs, *Luhut Binsar Pandjaitan*, stated that Indonesia is interested in cross-border carbon trading with other countries through the “*mutual recognition*” of its carbon exchange market in order to “*attract foreign buyers*”. This could entail the mutual recognition of carbon certificates. The launch of Indonesia's carbon exchange market marks a concrete step and reflects Indonesia's commitment to achieving the country's climate objectives. Still, Indonesia needs to do more in providing binding rules on carbon trade, notably by expanding it beyond coal-fired power plants to other GHG emission-intensive sectors.

New restrictions on digital trade: Indonesia's new rules on e-commerce enter into force

On 27 September 2023, Indonesia's Ministry of Trade issued *Minister of Trade Regulation No. 31 of 2023 concerning Business Licensing, Advertising, Guidance and Supervision of Business Actors in Trading Through Electronic Systems* (hereinafter, MOT Regulation No. 31 of 2023), the long-awaited revision of *Minister of Trade Regulation No. 50 of 2020*. With the aim of protecting micro, small, and medium enterprises (MSMEs) from “*predatory pricing*”, the new Regulation, which took effect immediately, prohibits e-commerce transactions via social media platforms and emphasises the need of ensuring a healthy business environment in digital trade. In this context, Indonesia's Minister of Trade, *Zulkifli Hasan* highlighted that the new rules aim to “*justly regulate fair trade between online and offline*”.

Overview of Minister of Trade Regulation No. 31 of 2023

In general terms, *MOT Regulation No. 31/2023* regulates the registration and licensing requirements for digital trade platforms, the standardisation requirements for imported products, as well as the rules on the advertisement of goods and services on digital platforms.

To ensure clarity for the effective supervision of digital platforms, *MOT Regulation No. 31/2023* identifies six types of business models carried out by ‘*Businesses trading via electronic communication facilities*’ (i.e., *Pelaku Usaha penyedia sarana komunikasi elektronik*, PPMSE), which are to be subject to different registration and licensing requirements. In this context, Article 1(9) of *MOT Regulation No. 31/2023* defined ‘*Businesses trading via electronic communication facilities*’ as “*businesses that provide a platform that is used for digital trade transactions*”. *MOT Regulation No. 31/2023* identifies the following types of business models:

- 1) ‘*Online retailer*’, which refers to a website or application created by businesses to sell their own products;
- 2) ‘*Marketplace*’, which refers to a platform provided by a company in the form of a website or application for businesses to conduct their sales;
- 3) ‘*Online classified advertisement*’, which refers to digital platforms in the form of websites or applications that bring together sellers and buyers for transaction processes that take place outside of the websites or applications;
- 4) ‘*Price comparison platform*’, which refers to a tool in the form of a website or application with commercial purposes to display price comparisons for goods and/or services that are sold on other websites or applications;
- 5) ‘*Daily deal*’, which refers to websites or applications that sell discount coupons and/or other tools that can be used as a means of payment by consumers for goods and/or services; and
- 6) ‘*Social commerce*’, which refers to social media platforms that provide certain features that allow businesses and sellers to conduct transactions on their platforms.

MOT Regulation No. 31/2023 strongly emphasises the need of ensuring fair trade and appropriate business competition on digital platforms. In this context, Article 13 of *MOT Regulation 31/ 2023* states that ‘*Businesses trading via electronic communication facilities*’ must provide equal business opportunities for all businesses and ensure that prices of goods

and/or services on the respective platforms are free from price manipulation. Furthermore, '*Businesses trading via electronic communication facilities*' are subject to the obligation of preventing and monitoring any form of anticompetitive practices and price manipulation practices on their respective platforms.

Stricter rules for foreign sellers and imported goods

MOT Regulation 31/2023 also provides stricter rules for foreign sellers that sell their products in Indonesia through e-commerce and for products imported through e-commerce. Notably, Article 5 of the Regulation requires foreign sellers to have a business license issued by the competent authorities in the country of origin. Foreign sellers must also ensure that their products have descriptions in Bahasa Indonesia language and display information on the country of origin.

To ensure that domestic and imported products are subject to the same requirements, imported products are now subjected to the same certification requirements as domestic products. Notably, the following conditions apply to imported goods:

- 1) Where products are covered by the *Indonesian National Standards*, obtain the *Indonesian National Standard (SNI)* certification mark;
- 2) Where products are not covered by the *Indonesian National Standards*, provide proof of fulfilment of the standards or technical requirements required by the country of origin;
- 3) Obtain a *Halal* certificate, where products are required to obtain *Halal* certification under Indonesian laws, such as for food products; and
- 4) Where relevant, such as for food and cosmetics, be registered with Indonesia's *Food and Drug Monitoring Agency*.

As regulated under Article 19 of *MOT Regulation No. 31/2023*, only goods with a minimum import price of USD 100 per product (*i.e.*, approximately IDR 1.5 million) may be imported. Goods with an import price below USD 100 are allowed to be imported only if they are listed in a '*positive*' list issued by the Ministry of Trade. Notably, this list has yet to be issued and is to be coordinated with relevant agencies and ministries. Local e-commerce platforms, such as *Shopee*, have undertaken measures to ensure compliance, such as closing shops owned by foreign sellers, requiring foreign sellers to complete the relevant registration procedures, and ensuring that the products that they sell are not imported at a price below USD 100 per unit.

Restrictions on social commerce

One of the most widely discussed provisions introduced by *MOT Regulation No. 31/2023* is the prohibition of social media platforms to provide features to conduct commercial transactions. Therefore, if a social media platform were to have features similar to e-commerce platforms, where users can conduct commercial transactions, it must establish its own e-commerce platform that is separate from the social media platform. Social media platforms as such are only allowed to promote products and/or services. According to Indonesia's Minister of Trade *Hasan*, this was done "*to prevent domination of the algorithm and prevent the usage of personal data for business interest*". To further protect consumer data in e-commerce transactions and to ensure fair business competition, Article 13(3) of *MOT Regulation No. 31/2023* prohibits '*Businesses providing electronic communication facilities*' from controlling consumer data and such businesses are obliged to ensure that there is no misuse of consumer data by digital platforms or its affiliated companies.

Controversies ahead

The new rules under *MOT Regulation No. 31/2023* are poised to have a significant impact on the e-commerce business in Indonesia and appear to be specifically targeting certain businesses based outside of Indonesia. While the separation of social media and e-commerce in view of consumer and data protection may be a justifiable approach, the imposition of a minimum price and '*positive list*' approach appear to conflict with Indonesia's international trade obligations. Notably, the minimum price requirement would likely constitute an

unnecessary barrier to cross-border e-commerce trade and might well be inconsistent with Article XI of the *General Agreement on Tariffs and Trade 1994*, which prohibits a WTO Member from imposing import and export restrictions or prohibitions other than duties, taxes, or other charges (see *Trade Perspectives, Issue No. 16 of 11 September 2023*). Furthermore, the minimum price restriction might create a risk of illegal import activities and possible disruption of the supply chain, especially for products that are not produced or widely produced in Indonesia, such as cell phone accessories. Therefore, these factors are also important to be taken into account by the Government of Indonesia in formulating the 'positive list'. Interested stakeholders should carefully review the new rules under *MOT Regulation No. 31/2023* to ensure compliance or to challenge some of the more controversial elements.

The European Food Safety Authority publishes its risk assessment on mineral oil hydrocarbons in food: Towards the setting of EU maximum levels?

On 13 September 2023, the *European Food Safety Authority* (hereinafter, EFSA) published an *Update of the risk assessment of mineral oil hydrocarbons in food*. Previously, in 2020, the European Commission (hereinafter, Commission) had considered to establish maximum levels for mineral oil hydrocarbons (hereinafter, MOHs) in specific food items and mandated the EFSA to update the 2012 *Scientific Opinion on Mineral Oil Hydrocarbons in Food*. The EFSA's scientific advice will help inform the Commission and EU Member States as they consider risk management measures and the establishment of definitive and binding maximum levels for MOHs in food.

Mineral oil hydrocarbons in food

MOHs are substances derived primarily from crude oil, but also from coal, gas, and biomass. There are two main classifications of MOHs: 1) Mineral oil saturated hydrocarbons (hereinafter, MOSHs); and 2) Mineral oil aromatic hydrocarbons (hereinafter, MOAHs). MOHs can enter food as environmental contaminants, lubricants from machinery used during harvesting and food production, processing aids, food or feed additives, and food contact materials. These compounds are not present in the food itself, but they can contaminate food at any point in the processing chain, from the raw materials, storage, transportation, production, to the related packaging materials. MOSHs and MOAHs have been found in a variety of foods and the highest levels were found in vegetable oils, such as olive oil, palm oil, and rice oil.

In its 2012 *Scientific Opinion on Mineral Oil Hydrocarbons in Food*, the EFSA concluded that the potential human health impact of MOHs varies widely depending on the MOH type. Additionally, the EFSA concluded that MOSHs can accumulate in human tissue and can harm the liver, while MOAHs, especially those with chemical structures including 3 to 7 aromatic rings, may cause cancer by damaging the DNA. Due to insufficient analytical data, the European Commission instructed the EU Member States to monitor MOHs in food and all food contact surfaces.

The setting of temporary maximum levels of mineral oil hydrocarbons in food

Currently, no maximum levels for MOHs have been established under *Commission Regulation (EU) 2023/915 of 25 April 2023 on maximum levels for certain contaminants in food and repealing Regulation (EC) No 1881/2006*, which sets maximum levels for other processing contaminants like polycyclic aromatic hydrocarbons (PAH) and 3-monochloropropane-1,2-diol (3-MCPD).

While awaiting the EFSA's updated opinion, the EU's *Standing Committee on Plants, Animals, Food and Feed* – Section Novel Food and Toxicological Safety of the Food Chain had set, on 21 April 2022, as a temporary solution, maximum limits of quantification (*i.e.*, the lowest analyte concentration that can be quantitatively detected with a stated accuracy and precision, LOQs) for MOAHs in dry foods with a low fat/oil content, in foods with a higher fat/oil content, as well

as in fats/oils. The limits were effective immediately, but not legally binding for EU Member States.

Following the 21 April 2022 meeting of the *Standing Committee on Plants, Animals, Food and Feed*, the EU Member States issued a [Joint Statement regarding the presence of Mineral Oil Aromatic Hydrocarbons \(MOAH\) in food](#), directing the relevant competent authorities and food business operators to conduct sampling and to investigate the sources of MOAHs in foodstuffs. EU Member States also agreed upon a tiered scheme whereby, if the quantified presence of MOAHs were to exceed a certain level in food products, the products should be withdrawn and, if necessary, recalled from the market on the basis of Article 14 of [Regulation \(EC\) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety](#) on 'food safety requirements', so as to ensure a high level of protection of human health. EU Member States agreed that the maximum sum concentrations of MOAHs in foodstuffs are not to exceed the following levels:

- 0.5 mg/kg for dry foods with a low fat/oil content ($\leq 4\%$ fat/oil);
- 1 mg/kg for foods with a higher fat/oil content ($> 4\%$ fat/oil); and
- 2 mg/kg for fats/oils.

Enforcing the temporary maximum levels

EU Member States implement the Joint Statement and enforce the maximum sum concentrations of MOAHs since the minutes of the meeting of 21 April 2022 have been published. EU Member States' competent authorities are, in fact, enforcing the maximum levels agreed in the Joint Statement. Infringements of the maximum levels, detected at border controls or at official controls on the market, are notified to the *Rapid Alert System for Food and Feed* (hereinafter, RASFF). A Border Rejection Notification is typically made when the infringement is detected at the import stage and the food has not been placed on the EU market yet. When the infringement has been detected in an official control on the market (*i.e.*, after the food has been placed on the market) "*Information to follow-up*" is notified to the RASFF to inform other members of the RASFF network where the food has been distributed in and/or placed on the market of, and needs to be withdrawn or recalled.

Regarding MOHs in vegetable oils, for example, on 28 March 2023, the German Authorities notified "*Mineral oil components (MOSH and MOAH) in rice oil from Thailand, via the Netherlands*". The notification basis was an "*Official control on the market*" and classification was "*Information notification for follow-up*" with a number of follow-up actions by other EU Member State authorities where the rice oil has already been distributed. On 30 June 2023, the Italian authorities notified "*Mineral oil components (MOSH and MOAH) in rice oil from Thailand*", with the "*Classification*" of a "*Border rejection notification*", since the goods had not yet been placed on the market. On 30 March 2023, the German authorities notified "*MOSH and MOAH in sunflower oil from Ukraine, via Austria*", and also on 30 March 2023, the German authorities notified "*Mineral oil (MOAH) in palm oil from Guinea, via the Netherlands*". It should be noted that the RASFF notifications do not only concern vegetable oils from third countries. For example, on 25 August 2023, the German authorities notified "*Mineral oil components (MOSH and MOAH) in organic olive oil from Spain.*"

The updated EFSA opinion on mineral oil hydrocarbons in food

In 2020, the European Commission asked the EFSA to: 1) Review research on MOHs' toxicity since 2012 and update the scientific opinion on the hazard characterisation (*i.e.*, the potential for harm) of MOHs; and 2) Estimate the exposure levels of MOHs, considering recent occurrence data; and, consequently, 3) Update the risk characterisation (*i.e.*, the likelihood that harm will happen) of MOHs, based on recent data. The EFSA's draft scientific opinion, based on the reassessment, underwent a [public consultation](#) from 15 March to 30 April 2023. For the updated opinion, the EFSA completed a comprehensive review of the scientific literature on various MOHs topics, including the identification of toxicokinetics (*i.e.*, the movement and fate of toxicants) and toxicity data, focusing on studies published since 2010. The EFSA regularly

collects information on the presence of contaminants in food and feed, including data on the levels of MOHs in food, from EU Member States and other stakeholders.

For the update of the risk assessment on MOHs in food, the EFSA considered occurrence data collected between 2011 and 2021, gathering past risk assessments from national and international organisations. The EFSA notes that there are limitations/uncertainties, such as the large number of chemical compounds in the MOH group, making it impossible to create a complete list of chemical characteristics. The EFSA notes that the Commission “*may take into account the following outcomes when considering whether to set maximum levels for MOH in certain foods*”, notably that: 1) It is likely to very likely (66-95% certain) that the present dietary exposure to MOHs does not raise concerns for human health; 2) Additional data on toxicity and exposure are required for the final risk assessment of 3- or more aromatic ring MOHs. However, it is extremely likely (99-100% certain) for toddlers and likely (more than 66% certain) for other age groups that present dietary exposure to 3- or more aromatic ring MOHs, which are associated with DNA damage and potentially causing cancer, thereby raising a possible concern for human health; 3) Dietary exposure to 1-2 ring MOHs lacks reliable toxicity data, which might raise a concern; and 4) The highest levels of MOHs were found in vegetable oils and the population with the highest exposure was young people, mainly infants via infant formula.

Outlook

The EFSA’s scientific advice will help inform the Commission and EU Member States as they consider risk management measures and the establishment of definitive and binding maximum levels of mineral oil hydrocarbons in food. Food products, in particular vegetable oils exceeding the temporary limits of quantification (LOQs) or the future maximum levels of mineral oil hydrocarbons, risk being withdrawn and, if necessary, recalled from the market. The relevant food industries should strive to contribute, to the extent possible, to reducing the transfer and occurrence of undesired mineral oil hydrocarbons in food. The food industry should carefully monitor the related developments, partake in the scientific debate, and contribute to the EU legislative and regulatory debate.

Recently adopted EU legislation

Trade Law

- *Commission Implementing Regulation (EU) 2023/2060 of 26 September 2023 laying down rules for the application of Regulation (EU) 2023/1231 of the European Parliament and of the Council as regards the listing of the flag States of fishing vessels catching fishery products that may enter into Northern Ireland from other parts of the United Kingdom and be placed on the market in Northern Ireland as retail goods*
- *Commission Implementing Regulation (EU) 2023/2059 of 26 September 2023 laying down rules for the application of Regulation (EU) 2023/1231 of the European Parliament and of the Council as regards the listing of certain rest-of-the-world commodities that may enter into Northern Ireland as retail goods from other parts of the United Kingdom and be placed on the market in Northern Ireland*
- *Commission Implementing Regulation (EU) 2023/2058 of 26 September 2023 laying down specific rules for the application of Regulation (EU) 2023/1231 of the European Parliament and of the Council on the special rates of official controls and the model general certificate for the entry into Northern Ireland from other parts of the United Kingdom of consignments of certain retail goods*

- *Commission Implementing Regulation (EU) 2023/2092 of 28 September 2023 on fixing the representative prices, import duties and additional import duties applicable to molasses in the sugar sector from 1 October 2023*

Trade Remedies

- *Commission Implementing Regulation (EU) 2023/2072 of 27 September 2023 repealing the anti-dumping duties on imports of biodiesel originating in Argentina and Indonesia imposed by Council Implementing Regulation (EU) No 1194/2013*

Food Law

- *Commission Implementing Regulation (EU) 2023/2091 of 28 September 2023 laying down rules for the application of Regulation (EU) 2023/1231 of the European Parliament and of the Council as regards the requirements for the entry into Northern Ireland from other parts of the United Kingdom of consignments of tubers of *Solanum tuberosum* L. for planting (seed potatoes), their use in Northern Ireland, and the model form of the plant health label for seed potatoes*
- *Commission Regulation (EU) 2023/2086 of 28 September 2023 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council and the Annex to Commission Regulation (EU) No 231/2012 as regards the use of buffered vinegar as a preservative and acidity regulator*
- *Commission Implementing Regulation (EU) 2023/2395 of 2 October 2023 amending Implementing Regulation (EU) 2023/2059 as regards the inclusion of certain goods of non-animal origin in the list of rest-of-the-world commodities*
- *Commission Regulation (EU) 2023/2382 of 29 September 2023 amending Annexes II and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for carbetamide, carboxin and triflumuron in or on certain products*

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