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EU rules for trade in seal products under review: The comeback of additional exceptions for commercial exploitation?

By Alejandro López Bo, Stella Nalwoga, and Paolo R. Vergano

In May 2024, the European Commission (hereinafter, Commission) launched an evaluation, known as *Fitness Check*, of the EU's legal regime for trade in seal products, involving a public consultation, a *call for evidence*, and targeted consultations. This process has prompted a debate of relaxing the current prohibition of the commercialisation of seal products in the EU. This article provides an overview of the EU's legal regime for trade in seals, explains the relevance of the related World Trade Organization (hereinafter WTO) dispute settlement rulings, explores why some stakeholders are pursuing a change in the current legal framework, and analyses how it could be undertaken in a manner that is compliant with the EU's obligations within the WTO.

EU rules for trade in seal products: A restrictive model with few exceptions

Trade in seal products is strictly framed in the EU. In view of the moral concerns related to the methods used in seal hunting and to address declining seal populations, in 1983 the EU adopted *Council Directive 83/129/EEC of 28 March 1983 concerning the importation into Member States of skins of certain seal pups and products derived therefrom*, which prohibits the commercialisation in the EU of products made from whitecoat and blue-back seal pups. In 2009, in light of the adoption by individual EU Member States of broader restrictive measures for seal products, the EU adopted *Regulation (EC) No 1007/2009 on trade in seal products* (hereinafter, *Seals Regulation*), harmonising the rules and expanding the scope of the commercialisation prohibition to all seal products.

However, the *Seals Regulation* provides for certain exceptions to the prohibition. Article 3 on '*Conditions for placing on the market*' establishes that the "*placing on the market of seal products shall be allowed only*" if such products meet specific conditions, notably that: 1) They result from hunts traditionally conducted by *Inuit* or indigenous communities that contribute to their subsistence (*i.e.*, the "*Indigenous Communities exception*"); and 2) They are hunted "*for personal use of travellers or their families*" and the hunts are of an "*occasional nature*" (*i.e.*, the "*travellers exception*"). In this context, EU Member States recognised their *own competent authorities* and the EU recognised certain government bodies in *Greenland*, *Nunavut*, and the *Northwest Territories of Canada* to certify compliance with the conditions that allow to benefit

from the exceptions and to issue the accompanying documents for seal products that may be legally sold in the EU in accordance with the Seals Regulation and with the relevant *Implementing Regulation (EU) 2015/1850 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products*.

The WTO ruling on the Seals Regulation and the EU's pursuit of compliance

Originally, the EU's *Seals Regulation* included a third exception for seal products resulting "from by-products of hunting that is regulated by national law and conducted for the sole purpose of the sustainable management of marine resources" (hereinafter, MRM), such as for purposes of population control and on the condition that the seal products were placed on the EU market "only on a non-profit basis" (i.e., the "MRM Exception"). In 2015, the EU removed the exception for seal products derived from MRM from the *Seals Regulation*. This followed the WTO ruling in the *EC – Seal Products dispute*, which found, *inter alia*, that the design of the MRM exception was discriminatory in view of the regulatory disparities in MRM hunting practices in the EU compared to those outside of the EU.

According to the WTO ruling, the EU's stringent requirements for MRM hunts led to the majority of seal products from Canada and Norway to be excluded from the EU market, while virtually all domestic EU products were likely to qualify for placement on the EU market, thus creating an unfair advantage for the latter and violating the non-discrimination principles under Article III:4 of the General Agreement on Tariffs and Trade (GATT) 1994 (see *Trade Perspectives, Issue No. 22 of 29 November 2013*). Such treatment of products from domestic MRM hunts vis-à-vis foreign 'like' products was not rationally connected to the objective of addressing EU public moral concerns on seal welfare. The WTO ruling was based on the legislative history of the EU Seal Regime, noting "that the MRM exception was designed with the situation of EU member States in mind".

In light of the WTO ruling, the EU amended the *Seals Regulation*, arguing that the MRM exception was removed as those hunts "may be difficult to distinguish from the large-scale hunts conducted primarily for commercial reasons" and that this "may lead to unjustified discrimination with regard to the seal products concerned". Consequently, the commercialisation of seal products remains prohibited, while the hunting for the sustainable management of marine resources is allowed.

Reinstating the MRM exception or maintaining the *status quo*?

In 2023, the Commission published a *Report* on the implementation of the *Seals Regulation*, which later led to the broader *Fitness Check*, indicating that some EU Member States, notably those around the Baltic Sea, had complained that increasing seal populations led to a negative impact on fish stocks and fishing gear and that the prohibition to commercialise seal products had had "negative socio-economic impacts". Therefore, these EU Member States supported reinstating the MRM exception or fully revoking the commercialisation prohibition. Relevant EU Member States emphasised that their seal populations were being closely monitored and that the hunting practices were conducted in a humane and environmentally responsible manner, minimising any negative impact on the species or the protection of public morals that had prompted the adoption of the *Seals Regulation*.

Certain Members of the European Parliament (hereinafter, MEPs) also defended the need to partially lift the commercialisation prohibition and to allow a degree of commercial exploitation of seal products on the basis of the sustainable management of marine resources, arguing that the current prohibition generated biological waste in the form of unprocessed seal carcasses and led to economic disadvantages and missed opportunities given that seal hunters incur costs without the benefit of being able to sell the seal products. At the same time, other MEPs *decried* any relaxation of the current prohibition, stating that the conservation concerns that had prompted the *Seals Regulation* were still valid today. The Commission repeatedly *underlined* its intention to await the findings of the *Fitness Check*, although, on 14 August 2024,

Commission Executive Vice-President Šefčovič stated that, “Without prejudice to these outcomes, the Commission does not intend to re-open large-scale commercial seal hunting, but rather to continue ensuring a good conservation status of the various seal species through the EU Seal Regime and other EU legislation such as the Habitats Directive”.

A key challenge in reinstating an MRM exception lies, as recognised in the 2015 amendment to the *Seals Regulation*, in distinguishing between seals’ carcasses from hunts undertaken in view of the sustainable management of marine resources or from commercial hunting. Additionally, there is a lack of consensus among EU Member States and third countries regarding the precise definition of MRM hunting and the specific conditions under which it may be carried out, adding further complexity to the issue. This regulatory divergence might have an impact on non-EU seal products, potentially leading to discrimination.

Next steps

The call for evidence in the context of the *Fitness Check* closed on 8 August 2024 and a broader report of the *Fitness Check* is currently being prepared by external consultants engaged by the Commission. This report will serve as a basis for the Commission to prepare a Staff Working document, which is to be published in the first quarter of 2025 and which will guide the Commission’s steps for any potential reform or legislative initiatives regarding the EU’s seal regime.

For any additional information or legal advice on this matter, please contact Paolo R. Vergano

The road ahead for Indonesia’s “Nutri-Level” labelling and its implications for the food industry

By Caitlynn Nadya, Alya Mahira, and Ignacio Carreño García

On 26 July 2024, the Government of Indonesia issued *Government Regulation No. 28 of 2024* (hereinafter, GR No. 28/2024), which implements Indonesia’s *Law No. 17 of 2023 on Health*. With the ultimate objective of reducing and managing certain non-communicable diseases, GR No. 28/2024 requires the Government to adopt measures aimed at reducing the intake of sugar, salt, and saturated fat in processed foods, including a front-of-pack labelling scheme for processed foods and beverages. On 9 September 2024, Indonesia’s *National Agency of Drug and Food Control (Badan Pengawas Obat dan Makanan, hereinafter, BPOM)* published a *Draft Regulation on Nutritional Information on Processed Food Labels* (hereinafter, Draft Regulation), detailing the future requirements for the front-of-pack labelling scheme, notably the “Nutri-Level” label. This article provides an overview of the labelling requirements and the “Nutri-Level” label, with a discussion of the relevant international standards, as well as the implications for food businesses.

The rationale for front-of-pack nutrition labelling

Excessive sugar, salt, and saturated fat intake is linked to higher risks of non-communicable diseases, including diabetes. According to the *International Diabetes Federation*, Indonesia ranked fifth globally in diabetes prevalence, with 19.5 million cases in 2021. This number is projected to increase to 28.6 million by 2045. Indonesia’s Ministry of Health notes that “*stroke, heart disease, and diabetes are the top three causes of death in Indonesia*”. In this context, the proposed mandatory front-of-pack labelling scheme aims at guiding consumers towards healthier food choices, encouraging a preference for processed products with lower contents of sugar, salt, and saturated fat. Indonesia is following in the footsteps of several ASEAN Member States, taking measures to pursue a healthier diet. Most notably, in 2021, Singapore introduced its “*Nutri-Grade*” scheme for processed foods and freshly prepared beverages, which grades the relevant food products from “A” to “D”, indicating the lowest to the highest content of sugar and saturated fat (see *Trade Perspectives, Issue No. 8 of 24 April 2023*).

Indonesia's mandatory "Nutri-Level" front-of-pack nutrition labelling scheme

Article 2 of the *Draft Regulation* would require businesses that produce and/or distribute processed foods to display nutritional information on the packaging, consisting of a nutrition information panel, as well as a front-of-pack "Nutri-level" label and, where applicable, a "Healthier Choice" logo. The related requirements would be implemented gradually for micro and small enterprises and would exclude certain products, such as instant coffee, powdered/instant tea, herbs, and mineral water.

According to Article 5 of the *Draft Regulation*, the nutrition information panel must include, *inter alia*, information on the serving size, the types of nutrients and non-nutrient substances, as well as the percentage of recommended daily intake. A mandatory template for the information panel is provided in Annex I to the *Draft Regulation*, with different formats based on the categories of processed foods. The "Nutri-Level" label would grade processed foods on a scale from "A" to "D," indicating a combined score with respect to the nutrients sugar, salt, and saturated fat. The *Draft Regulation* provides the details of the "Nutri-Level" grading scheme for each level, as follows:



Nutrients	Level			
	A	B	C	D
Sugar (g)	Not exceeding 0,5	Greater than 0,5 but not exceeding 6,0	Greater than 6,0 but not exceeding 12,5	Exceeding or equal to 12,5
Salt (natrium/mg)	Not exceeding 5,0	Greater than 5,0 but not exceeding 120,0	Greater than 120,0 but not exceeding 500,0	Exceeding 500,0
Total fat (g)	Not exceeding 0,5	Greater than 0,5 but not exceeding 3,0	Greater than 3,0 but not exceeding 17,0	Exceeding 17,0

According to Article 25 of the *Draft Regulation*, products graded "A" must not contain sweetening food additives, while those rated "B" may only use natural sweeteners, such as sorbitol syrup or isomalt. Products including sweetening food additives would be rated "C" or "D". The "Nutri-Level" label would be implemented gradually, initially applying only to processed beverages graded "C" and "D", and to ready-to-drink beverages, including liquid concentrates. The specific requirements regarding the "Nutri-Level" label are provided in Annex IV to the *Draft Regulation*.



Article 28 of the *Draft Regulation* states that processed food meeting the relevant nutritional profile criteria based on the content of sugar, salt, and total fat may bear a "Healthier Choice" logo. The requirements for the "Healthier Choice" logo and the nutritional profile criteria are provided in Annex V to the *Draft Regulation*.

Conformity with international standards and similar labelling schemes

Nutrition labelling schemes like "Nutri-Level" have been implemented in other jurisdictions and the "Nutri-Score" scheme, developed by France, and adopted by several EU Member States (see *Trade Perspectives, Issue No. 17 of 19 September 2022*) appears to have served as a blueprint for the "Nutri-Grade" and "Nutri-Level" schemes in Singapore and Indonesia, respectively. Setting out mandatory product characteristics, these schemes appear to be technical regulations in the context of the *World Trade Organization's* (hereinafter, WTO) *Agreement on Technical Barriers to Trade* (hereinafter, TBT Agreement). According to Article 2.2 of the TBT Agreement, WTO Members must ensure that such technical regulations are not prepared, adopted, or applied with a view to or with the effect of "creating unnecessary obstacles to international trade".

Article 2.4 of the *TBT Agreement* further specifies that technical regulations should be based on relevant international standards, such as the *Codex Guidelines on Nutrition Labelling*. These Codex Guidelines state that nutrient declarations should inform consumers about nutrient quantities without suggesting exact dietary requirements and recommend that supplementary nutritional information be optional and used in conjunction with (not as a replacement for) nutrient declarations. The Guidelines also suggest alternative methods, such as voluntary claims, to help consumers make informed dietary choices. Given the potential trade impact, Indonesia must ensure compliance with the relevant WTO obligations and it appears that the measures' objectives could indeed be achieved by less trade-restrictive policies, such as public campaigns encouraging to eat healthily and promoting physical activity.

Implications for businesses

Indonesia's forthcoming mandatory "*Nutri-level*" label is an initial step towards promoting healthier diets and preventing certain non-communicable diseases. While BPOM is finalising the *Draft Regulation* and has yet to announce a definitive implementation timeline, processed food producers should proactively prepare and assess the classification of their products in order to anticipate the future requirements. The new rules may pose challenges, particularly for micro, small, and medium enterprises, which often lack the necessary resources to make relevant adjustments.

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The EU adopts a list of third countries authorised to export products of animal origin compliant with EU rules on prohibited antimicrobials

By Ignacio Carreño García, Alejandro López Bo, and Tobias Dolle

On 7 October 2024, the EU published *Commission Implementing Regulation (EU) 2024/2598 of 4 October 2024 laying down the list of third countries or regions thereof authorised for the entry into the Union of certain animals and products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the application of the prohibition on the use of certain antimicrobial medicinal products*. According to its Article 3, *Regulation (EU) 2024/2598* will apply from 3 September 2026. The commercial implications of this measure will be significant, not only for countries not listed, but also for listed countries in terms of documentary evidence and of the assurances that must be provided to the EU in order to demonstrate that the EU's rules on antimicrobial medicinal products are respected. This article reviews *Regulation (EU) 2024/2598* and the EU framework of antimicrobial medicinal products used in animals.

Ensuring a responsible use of antimicrobials in animals

Antimicrobial resistance is viewed as a major threat to global health. When resistance develops to an antimicrobial agent used to treat a specific infection for which there are no alternative treatments and such resistance spreads, it may have serious and potentially life-threatening consequences for humans. Therefore, the EU seeks to ensure prudent and responsible use of antimicrobials in animals. Article 118(1) of *Regulation (EU) 2019/6 on veterinary medicinal products* requires that, with respect to animals or products of animal origin exported from third countries to the EU, the following products are not to be used: 1) Antimicrobial medicinal products for the purpose of promoting growth or to increase yield; and 2) Antimicrobial medicinal products containing an antimicrobial that is included in the list of antimicrobials reserved for the treatment of certain infections in humans.

List of countries providing assurances that they adhere to EU rules on antibiotics

Regulation (EU) 2017/625 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 lays down rules for official controls and other control activities performed by EU Member States' competent authorities in order to verify compliance with EU legislation in specific areas. In particular, Article 1(4) of *Regulation (EU) 2017/625* provides that the Regulation is to apply to official controls for the verification of compliance with Article 118(1) of *Regulation (EU) 2019/6*.

Commission Delegated Regulation (EU) 2023/905 supplementing Regulation (EU) 2019/6 as regards the application of the prohibition of use of certain antimicrobial medicinal products in animals or products of animal origin exported from third countries into the Union established stricter requirements to ensure that live animals and certain animal products exported to the EU are not produced using certain prohibited antimicrobials. According to Article 5 of *Regulation (EU) 2023/905*, the European Commission is mandated to adopt a list of countries that have provided sufficient evidence and assurances that their animals and animal products adhere to strict regulations, ensuring that the EU rules for antimicrobials are respected. Additionally, these countries must have implemented traceability and origin verification systems.

The countries having proven this are to be added to the list and will be allowed to export their animals or products thereof under scope to the EU market. As of 3 September 2024, exporters must use the updated official certificates that have an attestation of compliance signed by their competent authorities (see the model health certificates with the antimicrobial attestation provided in *Commission Implementing Regulation (EU) 2024/399 amending Annex III to Implementing Regulation (EU) 2020/2235 and Annex II to Implementing Regulation (EU) 2021/403 as regards model certificates for the entry into the Union of consignments of certain products of animal origin and certain categories of animals*). Article 2 of *Regulation 2024/2598* concerns the list of third countries authorised for the entry into the EU of consignments of certain animals and products of animal origin intended for human consumption. According to Article 2(1) of *Regulation 2024/2598*, the third countries in which, as regards animals and products of animal origin intended for export to the EU, the requirements laid down in Article 3 of *Regulation (EU) 2023/905* are complied with, are marked with 'X' for the relevant species or commodities in the Annex to the Regulation.

Countries that are allowed to export milk and other commodities to the EU

The Annex to *Regulation 2024/2598* lists a total of 72 countries. With respect to consignments of milk, the Annex of *Regulation 2024/2598* lists 23 third countries whose products are authorised for the entry into the EU as regards the application of the prohibition on the use of certain antimicrobial medicinal products laid down in Article 118(1) of *Regulation (EU) 2019/6*, namely: Argentina, Australia, Bosnia and Herzegovina, Belarus, Canada, Switzerland, Chile, UK, Israel, Isle of Man, Jersey, Japan, Moldova, Montenegro, North Macedonia, New Zealand, Russia, San Marino, Türkiye, Ukraine, the United States, and Uruguay. In addition, with respect to consignments of milk, Thailand and Singapore are marked with 'Δ' in the Annex, which means that, for products intended for export to the EU, the countries intend to process only milk originating either from EU Member States or from other third countries listed in the Annex. This may, *inter alia*, concern milk originating in New Zealand. With respect to milk, the United Arab Emirates (for camel milk only) and Guernsey are not included in the new list in the Annex to *Regulation (EU) 2024/2598*, but are currently listed for the export of milk in Annex I to *Commission Implementing Regulation (EU) 2021/405 laying down the lists of third countries or regions thereof authorised for the entry into the Union of certain animals and goods intended for human consumption in accordance with Regulation (EU) 2017/625*.

For other commodities, comparing the list of *Regulation (EU) 2024/2598* with the list of non-EU countries currently authorised to export to the EU under *Regulation (EU) 2021/405* (currently 97 countries), 21 countries are not included, and will still need to provide sufficient evidence and assurances that their animals and animal products adhere to strict regulations ensuring that the EU rules for antimicrobials are respected in order to avoid any disruption to trade on 3 September 2026, when the list enters into effect, including Armenia (for aquaculture; honey); Indonesia (aquaculture); India (aquaculture; eggs; honey; casings); Iran (aquaculture;

casings); Kenya (aquaculture); Sri Lanka: (aquaculture); Serbia (all commodities); Tanzania (aquaculture and honey); Tunisia (aquaculture; casings); Uganda (honey); and Uzbekistan (casings). The commercial implications of this measure will be significant, not only for the countries not listed, but also for listed countries in terms of the documentary evidence and assurances that must be provided to the EU to demonstrate that the EU rules for antimicrobials are respected. The new rules extend the EU's prohibition *on the use of certain antimicrobials reserved for human medicine in animal farming to animals and animal products imported into the EU*. According to a [Report](#) issued by the US Department of Agriculture's Foreign Agricultural Service, "*these overall measures could impact up to USD 1.5 billion per year in exports of U.S. animal products to the EU depending on when and how requirements for compliance and implementation timelines are enforced*".

Outlook

The Regulation may still be amended before its application in September 2026, especially if third countries not yet listed submit the required declarations soon. Their listing before 3 September 2026 would avoid the negative consequences for trade in the relevant products.

For any additional information or legal advice on this matter, please contact Ignacio Carreño García

Recently adopted EU legislation

Trade Law

- *Commission Delegated Regulation (EU) 2024/2547 of 5 September 2024 amending Regulation (EU) 2021/821 of the European Parliament and of the Council as regards the list of dual-use items*

Customs Law

- *Decision no 1/2024 of the Partnership Council established by 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 of 5 November 2024 modifying Annex 3 to 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 (Product Specific Rules of Origin) [2024/2837]*

Food Law

- *Commission Regulation (EU) 2024/2856 of 12 November 2024 amending Annex I to Regulation (EC) No 1334/2008 of the European Parliament and of the Council as regards the removal of the flavouring substance Benzene-1,2-diol (FL No. 04.029) from the Union list*
- *Commission Regulation (EU) 2024/2858 of 12 November 2024 amending Regulation (EU) 2019/1871 as regards the application of reference points for action for nitrofurans and their metabolites in collagen*

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