

Dear Readers and Friends of *Trade Perspectives*®,

We hope that you have started well the new year and that 2019 will be one of many interesting trade perspectives and positive developments.

With this issue, *Trade Perspectives*® enters into its 10th year. It has been a real commitment to publish it every 2 weeks and 23 times a year, but we have done it with passion and hoping to contribute to the discussions surrounding key international trade developments in an impartial and objective manner. That passion and the same objectives remain strong as we commence our 10th year of operation.

We hope to continue hearing from you, as we often do, and that you will contribute with ideas for possible topics, supporting or alternative legal arguments, and even written contributions for publication on *Trade Perspectives*®. Follow us on *Twitter* @FratiniVergano and feel free to circulate *Trade Perspectives*® further to your colleagues and interested contacts.

Best regards,

All of us at *FratiniVergano – European Lawyers*

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Political agreements on EU directives on single-use plastics and port reception facilities – The broader context of EU initiatives addressing plastic waste and littering

In December 2018, the European Parliament and the Council of the EU (hereinafter, Council) reached provisional political agreements on two directives, which are part of the *European Strategy for Plastics in a Circular Economy*: 1) A *Directive on the reduction of the impact of certain plastic products on the environment*; and 2) A *Directive on port reception facilities for the delivery of waste from ships*. This article puts both directives in the broader context of other EU initiatives in the area of plastic waste and litter, including *Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste*, putting forward a comprehensive approach to tackling litter, notably by promoting prevention and the establishment by the European Commission (hereinafter, Commission), on 11 December 2018, of the *Circular Plastics Alliance* of key industry stakeholders covering the

full plastics value chain, as part of efforts to reduce plastics littering, increase the share of recycled plastics and stimulate market innovation.

In January 2018, as part of its effort to transform the EU's economy into a more sustainable one and to implement the ambitious *Circular Economy Action Plan* adopted in December 2015, the European Commission adopted a new set of measures (*i.e.*, the *Circular Economy Package*), including: 1) A *Communication from the Commission* on “A European Strategy for Plastics in a Circular Economy” to transform the way plastics and plastic products are designed, produced, used and recycled, with the aim that, by 2030, all plastic packaging should be recyclable; 2) A Communication on options to address the interface between chemical, product and waste legislation that assesses how the respective rules relate to each other; 3) A Monitoring Framework on progress towards a circular economy at EU and national level composed of a set of ten key indicators, which cover each phase (*i.e.*, production, consumption, waste management and secondary raw materials), as well as economic aspects (*e.g.*, investments and jobs) and innovation; and 4) A Report on Critical Raw Materials and the circular economy that highlights the potential to make the use of the 27 critical materials in the EU's economy more circular.

The *European Strategy for Plastics in a Circular Economy* highlights the need for specific measures to reduce the impact of single-use plastics, particularly on the seas and oceans. To reduce the leakage of plastics into the environment, measures on port reception facilities shall tackle sea-based marine litter. In addition, a Commission report addresses the impact of the use of oxo-degradable plastic (*i.e.*, plastic that degrades due to oxidative and cell-mediated phenomena), including oxo-degradable plastic carrier bags, on the environment. On 19 December 2018, the European Parliament and the Council of the EU reached a provisional political agreement on the *Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment* (hereinafter, the Single-Use Plastics Directive) proposed by the Commission to tackle marine litter at its source, targeting the ten plastic products most often found on beaches, as well as abandoned fishing gear. The agreement is based on a proposal presented in May 2018 by the Commission, as part of the comprehensive *European Strategy for Plastics*, adopted earlier in 2018, to protect citizens and the environment from plastic pollution whilst fostering growth and innovation. The *Single-Use Plastics Directive* aims at contributing to a broader effort of turning the EU into a more sustainable, circular economy, reflected in the *Circular Economy Action Plan*.

The *Single-Use Plastics Directive* envisages different measures to apply to different product categories. Where alternatives are easily available and affordable, single-use plastic products, such as plastic cotton buds, cutlery, plates, straws, drink stirrers, sticks for balloons, as well as products made of oxo-degradable plastic, and food and beverage containers made of expanded polystyrene, will be banned from the market. For products without straight-forward alternatives, the focus is on limiting their use through a reduction in consumption, revised design and labelling requirements, and waste management/clean-up obligations for producers. The provisional agreement also provides for: 1) A reinforced application of the ‘polluter pays’ principle, in particular for tobacco, through the introduction of extended producer responsibility (hereinafter, EPR); 2) An EPR regime for fishing gear to ensure that manufacturers, and not fishermen, bear the costs of collecting nets lost in the sea; 3) A 90% collection target for plastic bottles by 2029; 4) A 25% target for recycled content in plastic bottles by 2025 and 30% by 2030; 5) Mandatory labelling on the negative environmental impact of cigarettes with plastic filters thrown in the street, as well as for other products, such as plastic cups, wet wipes and sanitary napkins.

In the negotiations between the European Parliament and the Council on the *Single-Use Plastics Directive*, some compromises had to be reached. Although the European Parliament had pushed for it, there is no binding EU-wide target to reduce the consumption of food containers and cups. Instead, EU Member States will be required to “significantly reduce” their output. The 90% collection target for plastic bottles was delayed by four years from 2025 to 2029. However, there is now a 77% midway benchmark for 2025. EU Member States had voiced concerns that the proposed 2025 goal was far too ambitious, although examples of

deposit return schemes, which reward consumers for bringing back their empty containers, have shown return rates of more than 90% within a short period. An obligation to ensure that plastic caps remain attached to containers was also delayed from 2021 to 2024. The *Single-Use Plastics Directive* establishes important obligations for producers of the most-littered plastic items. Currently, the costs of littering of single-use plastic items are taken up by the public sector and, ultimately, by tax payers. Producers will help cover the costs of waste management, clean-up and recycling costs, as well as awareness-raising measures for food containers, packets and wrappers (such as for crisps and sweets), drinks containers and cups, tobacco products with filters (such as cigarette butts), wet wipes, balloons, and lightweight plastic bags. The industry will also be given incentives to develop less-polluting alternatives for these products.

The *Single-Use Plastics Directive* is complemented by other measures taken against marine pollution, in particular the *Directive on port reception facilities for the delivery of waste from ships* (hereinafter, *Directive on port reception facilities*), on which the Council reached a provisional agreement with the European Parliament on 12 December 2018. This measure had also been proposed by the Commission in January 2018, as part of the *Circular Economy Package*. The EU is combating the dumping into the sea of plastic, derelict fishing gear and other waste from ships by providing incentives for ships to discharge their waste in ports. Under the *Directive on port reception facilities*, ships will be required to pay an indirect fee, which will give them the right to deliver their waste to a port, and which will have to be paid regardless of whether or not they deliver any waste. This fee will also apply to fishing vessels and recreational craft, to help prevent end-of-life fishing nets and passively fished waste to be dumped directly into the sea. The fee will be based on the principle of cost recovery. In certain cases, however, if a ship delivers an exceptional amount of waste, an additional direct fee may be charged to ensure that the costs related to receiving such waste do not create a disproportionate burden for a port's cost recovery system. In contrast, a reduced waste fee will be applied for short sea shipping and for 'green ships' (i.e., vessels that can demonstrate reduced quantities of waste and sustainable on-board waste management). In addition, the *Directive on port reception facilities* aims at improving the efficiency of maritime operations in ports by "cutting red tape for industry and other stakeholders", as the Commission commented. Its provisions will also be more consistent with EU waste legislation, for example by stipulating that ports must have waste reception and handling plans. Finally, the *Directive on port reception facilities* will align EU legislation with the *International Convention for the Prevention of Pollution from Ships*. Landlocked EU Member States, which do not have ports or ships flying their flag, will not be required to transpose the directive or certain parts of it.

The Explanatory Memorandum to the *Single-Use Plastics Directive's* proposal issued by the Commission reads that this initiative would contribute to achieving the *United Nations Sustainable Development Goals* (SDGs) 12 and 14, the objectives of the *Communication on International Ocean Governance* and the commitments of the 2017 *Our Ocean Conference*. Most notably, the Commission notes that the initiative on single-use plastics was consistent with the EU's international trade obligations. More specifically, the Commission notes that the forthcoming measure would ensure non-discrimination between products produced in the EU and products imported into the EU. Indeed, the restrictions on the placing on the market of certain single-use plastic products and other measures set out in the directive, apply to EU and third country producers alike. Still, the EU measures might have a considerable impact on the trade of such products and it remains to be determined if there is indeed no discrimination towards EU trading partners. In general terms, a global piecemeal approach towards addressing waste and plastic pollution might not be the most sustainable approach and would surely have negative implications for traders around the world. A more global and multilateral solution should be envisaged and pursued.

In the broader context of littering and waste, on 4 June 2018, *Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste* entered into force, putting forward a comprehensive approach to tackling litter, notably by promoting prevention. *Directive (EU) 2018/851* notes that the fight against litter should be a shared effort between competent authorities, producers and consumers. Consumers should

be incentivised to change their behaviour, while producers should promote the sustainable use of and contribute to the appropriate end-of-life management of their products. This applies, *inter alia*, to chewing gums, which, after their use, are often dumped by consumers in the environment. In the UK, for instance, there is a debate on establishing a tax for single-use plastic waste, which would include chewing gums (see *Trade Perspectives*, [Issue No 17 of 21 September 2018](#)).

EuroCommerce, the trade association that represents the interests of Europe's retail and wholesale sector, reportedly stated that it welcomed the EU's action on single use plastics, but was still concerned with increased producer responsibility for cleaning up litter and paying for the infrastructure and operation of collection systems. According to *EuroCommerce*, the sector's commitment to sustainable use of plastics was absolutely clear, and all would be done to respond to customers' demand for safe and sustainable products. The legislation would, of course, be observed, but *EuroCommerce* reportedly warned that there are elements that would require retailers to take responsibility for issues, such as littering, over which they had only limited influence.

Finally, on 11 December 2018, the Commission launched the *Circular Plastics Alliance* of key industry stakeholders covering the full plastics value chain, as part of its efforts to reduce plastics littering, increase the share of recycled plastics and stimulate market innovation. Against the backdrop of the Commission's efforts to help accelerate Europe's transition towards a circular economy, the *Alliance* will aim at improving the economics and quality of plastics recycling in the EU. In particular, the *Alliance* is supposed to strengthen the match between supply and demand for recycled plastics, which was identified as the main obstacle to a well-functioning EU market of recycled plastics. With this new initiative, the Commission intends to contribute to the objective of achieving at least ten million tonnes of recycled plastics into new products on the EU market by 2025, as set in the *European Strategy for Plastics*, ensuring that recycled plastics find their way into new products, instead of into landfills or incinerators.

The *Alliance* aims at facilitating this cooperation, building on the commitments that the plastics industry already made and encouraging more ambitious action. The *Alliance* will be a high-level, multi-stakeholder platform gathering key industry players covering the full plastics value chain, from waste collectors to recyclers and primary producers, to converters, brand owners and retailers. The *Alliance* will pursue three main operational objectives: 1) Fostering short-term, voluntary and coordinated actions and investments by key industry stakeholders (covering, e.g., separate collection of plastic waste; harmonised reporting on collection and recycling rates and volumes; investments in sorting and recycling facilities; voluntary standards on the '*design for recycling*' of plastic products and others); 2) Reporting on the obstacles that may hamper stakeholders' efforts to fully deliver on their pledges and to reach the target set for 2025 (some of those already identified include lack of infrastructure and standardisation gaps); and 3) Monitoring progress made towards more plastics recycling and more uptake of recycled plastics in the EU.

The Commission invited key industry stakeholders to join the *Alliance*, in particular from the sectors that account for most demand for plastics in Europe, such as the packaging, construction and automotive industries. Other sectors will be approached as well for their contribution in order to address the full plastics value chain. The first meeting of the *Circular Plastics Alliance* will be held on 5 February 2019. A series of operational meetings on the key topics identified by the *Alliance* at their first meeting will take between March and May 2019. Interested parties may contact the Commission for further information.

The agreed texts on the *Single-Use Plastics Directive* and the *Directive on port reception facilities* will now undergo legal and linguistic finalisation. The provisional agreements reached must now be formally approved, first by the European Parliament and then the Council. Following their approval, the directives will be published in the EU's Official Journal and the EU Member States will have two years to transpose them. The increased regulatory activity in EU Member States and the EU on plastics, littering and waste, should be monitored and

stakeholders should be prepared to participate in shaping policies by interacting with relevant EU and EU Member State institutions and affected stakeholders.

As the hemp and cannabidiol (CBD) market expands, regulatory measures follow and lead to a global piecemeal

On 1 January 2019, the 2018 US ‘*Farm Bill*’ (i.e., the *Agriculture Improvement Act of 2018*) went into effect. *Inter alia*, it redefines industrial hemp as an agricultural commodity, and more importantly, removes it from the *Controlled Substances Act*. However, on 20 December 2018, the Commissioner of the US Food and Drug Administration (hereinafter, FDA), Scott Gottlieb, underlined that this removal did not mean that adding cannabidiol (hereinafter, CBD), which is derived from hemp, to foods or food supplements became legal as well. In November 2018, New Zealand amended its regulations, allowing hemp seeds to be treated as ‘*any other edible seed*’. Finally, within the EU, as the number of stores selling CBD products rapidly increases, legal uncertainties remain regarding the regulation of hemp and derived products, such as CBD.

Products, derived from the hemp plant, in particular CBD oils, are increasingly marketed in the EU and elsewhere. Hemp seeds are reportedly a good source of protein and have proved useful in human nutrition with the seed’s oil richness in omega-3 and omega-6 fatty acids. The seeds can be used to produce protein powder, as well as bread and cereals. Likewise, the oil is used in food supplements and for the production of margarine, salad dressing and cosmetics, *inter alia*. Hemp and marijuana are two popular names for the cannabis plant. Tetrahydrocannabinol (hereinafter, THC) is a cannabinoid naturally occurring in the hemp plant (i.e., *Cannabis sativa L.*). THC, as well as CBD, are some of at least 113 cannabinoids identified in the cannabis plant. Cannabinoids are the chemicals that give the cannabis plant its medical and recreational properties. THC is the most abundant cannabinoid in marijuana before CBD. CBD, which accounts for up to 40% of the plant’s extract, does not appear to have any psychoactive effects such as those caused by THC.

Hemp, or industrial hemp, is a variety of the *Cannabis sativa L.* plant species, which is cultivated specifically for the industrial uses of its derived products. CBD hemp oil is a natural botanical extract of the common hemp plant and is produced from high-CBD, low-THC hemp. This sets it apart from medical marijuana products, which are usually produced from plants with high concentrations of THC. Because hemp contains only trace amounts of THC, these hemp oil products are non-psychoactive. In hemp, THC is only present in trace amounts, while CBD dominates the plant’s chemical makeup. CBD is considered a safer and less controversial alternative to THC, while still offering significant health benefits, such as a downregulating impact on disordered thinking and anxiety. Potential uses of CBD are still the subject of ongoing research. While CBD use is considered to be safe, larger and longer human trials have been recommended before a definitive conclusion could be reached. CBD oils are almost always produced from industrial hemp.

The recent regulatory changes in the US, in the context of the ‘*Farm Bill*’ have led to widespread debate and confusion on what would be allowed under the amended rules and what would remain prohibited. In fact, according to the FDA, the Farm Bill “*changes certain federal authorities relating to the production and marketing of hemp, defined as cannabis (Cannabis sativa L.), and derivatives of cannabis with extremely low (less than 0.3 percent on a dry weight basis) concentrations of the psychoactive compound delta-9-tetrahydrocannabinol (THC)*”. Most notably, the Farm Bill also removes hemp from the *Controlled Substances Act*, which means that hemp will no longer be an illegal substance under federal law. More specifically, hemp is no longer considered a so-called ‘*Schedule 1 substance*’ and the Drug Enforcement Administration (i.e., DEA) will no longer be able to interfere with the interstate commerce of hemp products. For the US hemp industry, this change will lead to important market opportunities across the US.

However, FDA Commissioner Gottlieb underlined that Congress had explicitly preserved the FDA's authority to regulate products containing cannabis or cannabis-derived compounds under the *Federal Food, Drug, and Cosmetic Act* (FD&C Act) and Section 351 of the *Public Health Service Act*. The FDA will, therefore, continue to enforce the relevant laws that aim at protecting patients and the public. At the same time, the FDA notes that the current regulatory framework also provides potential regulatory pathways for products containing cannabis and cannabis-derived compounds. In view of the strong public interest in hemp and hemp-derived products, such as CBD, and the apparent interest of the US Congress in contributing to the development of appropriate hemp products, the US FDA announced that it intended to organise a public meeting for stakeholders “to share their experiences and challenges with these products, including information and views related to the safety of such products”. Notably, the FDA sees this meeting as an opportunity “to gather additional input relevant to the lawful pathways by which products containing cannabis or cannabis-derived compounds can be marketed”, and how those legal pathways could be made more predictable and efficient.

On 6 November 2018, the Government of New Zealand announced that hemp seeds would now be treated as ‘any other edible seed’, as legislative changes allowed for it to be sold as food. The official announcement of the amendment reads: “*The Misuse of Drugs (Industrial Hemp) Regulations 2006 and the Food Regulations 2015 will be amended to allow the sale of hemp seed as food. Hemp flowers and leaves will not be permitted*”. A ‘Guide to Hemp Seeds as Food’, published by New Zealand’s Ministry for Primary Industries (hereinafter, MPI) on 19 November 2018, emphasises that the only part of the low-THC *Cannabis sativa* plant allowed to be sold as food or used as an ingredient in food is the seed. According to the MPI Guide, food made from the leaves, flowers, buds, stems, or any other part of the low THC *Cannabis sativa* plant is not allowed. Most importantly, the Guide notes that medicinal cannabis for therapeutic use and CBD products (e.g., CBD oil) continued to be prohibited when sold as food or used as an ingredient in food and is administered by the Ministry of Health, instead.

In the EU, no harmonised specific rules on hemp or CBD currently exist. Depending on how products derived from the hemp plant are manufactured, in particular, hemp oils and CBD oils, they may require authorisation under *Regulation (EU) 2015/2283 on novel foods*, before they being placed on the EU market. However, hemp oil obtained by cold-pressing the seeds or other parts of the hemp plant does arguably not require pre-market authorisation as a novel food. If, however, the natural CBD content of hemp oil is selectively increased using certain forms of extraction or purification techniques, then a novel food authorisation might be required. On the scientific side, on 8 November 2018, the German Federal Institute for Risk Assessment (i.e., *Bundesinstitut für Risikobewertung*, hereinafter, BfR) issued statement No. 034/2018 in which it held that THC levels were too high in many foods containing hemp and that health impairments were possible. According to the BfR, this applies in particular to those consumers that consume such products regularly. According to the BfR, the ‘psychomotor’ effects (relating to the connections made between mental and muscle functions) could also be exacerbated by alcoholic beverages and certain medicines. In the opinion of the BfR, therefore, the levels of delta-9-THC in hemp-containing foods should be further minimised. This opinion should be taken into account by businesses supplying the German market with hemp-containing products and may contribute to additional legislative and regulatory activity. For instance, on 30 October 2018, Italy’s Ministry of Health notified the European Commission (hereinafter, Commission) of a Draft Decree setting maximum levels of THC in food (see *Trade Perspectives*, Issue No. 22 of 30 November 2018).

The important growth of the market for hemp and hemp-derived products is currently leading to increased regulatory activity around the world. While this will contribute to addressing the legal uncertainties that exist due to a lack of regulation, the recent confusion in the US on regulating hemp, but not hemp-derived products, namely CBD, shows that considerable work remains to be done and that the regulatory developments will likely continue. In the absence of global guidance, countries will continue to regulate this sector as they deem appropriate, which will likely lead to a global piecemeal of regulation that could significantly complicate market actors’ activities.

Even in light of the various terms used on the market (*i.e.*, hemp, *cannabis sativa*, marijuana, CBD, THC), determining the applicable regulation does not appear to be a straightforward exercise. As the US FDA indicates, it will soon launch a process to review its position on CBD. The legal issues surrounding hemp and CBD oil are plentiful, in particular as legislation and regulation around the world continues to evolve and as regulatory differences persist. Interested stakeholders, as well as regulators, should, therefore, closely monitor the ongoing developments and participate in the various stakeholders consultations.

New Zealand to introduce national legislation on organic production and the EU amends its legal framework for organic products – an issue for EU-New Zealand trade negotiators?

On 3 December 2018, New Zealand's Minister for Agriculture, Biosecurity, Food Safety, Rural Communities and Minister of State for Trade and Export Growth, Damien O'Connor, announced that a national standard for organic production would be "*progressed as a Government bill*" in 2019. He added that New Zealand is one of only two of the top 25 organic markets in the world that currently only has voluntary instead of mandatory standards for organic production. Considering that the EU's import regime for organic products is soon going to change, the issue of organic production could become an important aspect in the ongoing EU-New Zealand trade negotiations, with the next round scheduled to take place in February 2019. Similarly, issues related to the (limited) use of pesticides in organic production and in "*non-organic*" plant production, could be addressed in the context of the trade negotiations.

At present, New Zealand only has private standards and certifiers for organic products. Two of the largest certifiers are *BioGro New Zealand* and *AsureQuality Limited*, both of which are authorised to certify exports of organic products to the EU, and both have reportedly agreed to move from their private standards into the national standard. "*A national standard gives consumers confidence in organic claims and businesses certainty to invest and innovate in the growing sector*", Minister O'Connor said in his statement, adding that "*It will also help grow our organic export trade as it brings us in line with international approaches to regulation*". According to the Minister, the global demand for organic products was increasing and New Zealand's organic sector had responded with growth of 30% over the past couple of years and is now worth about NZ dollars 600 million (around EUR 354 million) a year. In a public consultation carried out in 2018, most submissions (around 85%) supported the Government's approach of a single set of rules for organic production.

New Zealand organic products trade association *Organics Aotearoa New Zealand* (hereinafter, OANZ) reportedly supports a new national standard, welcoming the swift action taken by the Government and the Ministry for Primary Industries (hereinafter, MPI) in response to the extensive consultation process undertaken. OANZ stated that "*Market drivers demand that New Zealand provides customers, consumers and the community domestically and internationally with certainty and credence that certified organic products from here are indeed the real deal*", adding that "*We [...] are moving to the next phase in drafting a Bill to define a national standard that is enforceable of what constitutes authentic, certified organic products from New Zealand*".

In the EU, *Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products* establishes detailed rules on organic produce including wine, aquaculture products and seaweed. In particular, *Regulation (EC) No 834/2007*: 1) Defined organic production further by describing its objectives and principles; 2) Improved the harmonisation of organic production rules within the EU, by putting an end to national rules for animal products; 3) Introduced the possibility of exceptions to the rules under the responsibility of EU Member States, but with strict limitations and for a limited period of time; 4) Linked the organic control system to the official food and feed controls system provided for in *Regulation (EC) No 882/2004 on official controls* and made the accreditation of private control bodies obligatory; and 5) Restructured the import regime: in addition to the recognition of third

countries for the purpose of equivalence, the EU recognised control bodies active in third countries for the purpose of equivalence or compliance.

The previous system of individual authorisations granted by EU Member States on a consignment-by-consignment basis, under *Regulation (EEC) No 2092/91*, was removed from *Regulation (EC) No 834/2007* and was phased out. Under *Commission Regulation (EC) No 1235/2008 of 8 December 2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries*, products may be imported from those non-EU countries whose rules on organic production and controls are equivalent to the ones of the EU. Currently, this applies to Argentina, Australia, Canada, Chile, Costa Rica, India, Israel, Japan, Republic of Korea, New Zealand, Switzerland, Tunisia and the US (see *Trade Perspectives*, [Issue No. 4 of 24 February 2012](#) and [Issue No. 22 of 1 December 2017](#)). Organic products from non-EU countries may be distributed within the EU Single Market only if produced and inspected under conditions that are identical or equivalent to those applying to EU organic producers. The rules introduced in 2007 were more flexible than the previous ones, under which organic goods were allowed to be imported from outside the EU only if they were EU-certified, if the EU Member States monitored that there was sufficient evidence that the imported products were manufactured according to production rules equivalent to the EU rules, and if an import licence had been issued. Control bodies (*i.e.*, Certifying Organisations) operating in non-EU countries were directly authorised and monitored by the European Commission and by EU Member States. Certain third countries' authorities and bodies were authorised to issue documentary evidence attesting that organic products and organic operators complied with organic rules equivalent to those of the EU, as well as certificates of inspection for the import of organic products into the EU.

New Zealand is recognised for the purpose of equivalence since 2002. Annex III of *Commission Regulation (EC) No 1235/2008* establishes the organic product categories that may be imported from New Zealand: 1) Unprocessed plant products; 2) Live animals or unprocessed animal products; 3) Processed agricultural products for use as food, excluding yeast; and 4) Vegetative propagating material and seeds for cultivation. Annex III of *Commission Regulation (EC) No 1235/2008* indicates as current production standard the Ministry of Agriculture and Forestry's (MAF) "*Official Organic Assurance Programme* (hereinafter, OOA) *Technical Rules for Organic Production*", which is in fact not a statutory standard. As control bodies, the MPI; *AsureQuality Limited*; and *BioGro New Zealand* are currently recognised.

However, the current EU organic farming regime will only apply until the end of 2020. As of 1 January 2021, *Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007* will apply. The new organic products regulation was agreed after more than three years of negotiations in the inter-institutional *trilogue* by the European Commission (hereinafter, Commission), the European Parliament's (hereinafter, Parliament) negotiators, and EU Member States' Governments in the Council on 28 June 2017, and thereby endorsed on 20 November 2017 by the Council's Special Committee on Agriculture. The agreed text intends to increase consumers' trust in organic foodstuffs and contribute to the sector's potential for growth.

The trade regime under *Regulation (EU) 2018/848* is adapted to improve the level playing field for organic operators of the EU and in third countries, and in order to better ensure consumer confidence. The possibility of equivalence agreements with third countries remains available, while the system of unilateral equivalency is phased out. Instead of the more than 60 different standards, which were considered equivalent with EU rules and that applied to imported goods, the organic farming rules set out in *Regulation (EU) 2018/848* will apply. Under the new regime, the recognition of control bodies is progressively shifted to a regime that requires compliance with EU rules. This change of approach has been justified by the EU legislator with the realisation that, operating under the principle of equivalence (rather than the principle of compliance or conformity), the schemes around the world that are certified as equivalent to the

EU's own rules, *inter alia*, often tolerate the use of agrochemicals or practices not permitted in the EU (e.g., in cases, where they were used to treat diseases not present in Europe), which can place EU organic farmers at a disadvantage.

What does this mean for New Zealand's organic exports to the EU? To be eligible for exporting organic products to the EU, New Zealand's operators have to comply with the EU production rules. This should be addressed in the drafting of New Zealand's new '*Organic Bill*'. For example, Annex I (on approved inputs), Table 2 (pesticides) of the current MAF's "*OOAP Technical Rules for Organic Production*" lists a number of insecticides, acaricides and fungicides that are permitted in the process of organic production in New Zealand. The EU organic farming practices set out in organic farming legislation (current and future) include very strict limits on chemical synthetic pesticide and synthetic fertiliser use, livestock veterinary medicines (e.g., antibiotics), food additives and processing aids and other inputs. Annex II (on pesticides) to *Commission Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control* lists the plant protection products that can currently be used in organic production.

As regards the recognition of the EU organic products by New Zealand, New Zealand's competent authority recognises EU organic production rules and the EU's control system as equivalent to the OOAP. All products sold in New Zealand have to be truthfully labelled in accordance with the Fair Trading Act of 1986.

On 22 May 2018, the Council of the EU (hereinafter, Council) authorised the European Commission (hereinafter, Commission) to begin trade negotiations with Australia and New Zealand and adopted the negotiating directives for both sets of trade talks (see *Trade Perspectives*, [Issue No. 11 of 1 June 2018](#)). The first two negotiating rounds between the EU and New Zealand were held in July and December 2018, respectively. These negotiations provide unique opportunities to further reduce or eliminate tariffs, streamline non-tariff measures (NTMs), and remove non-tariff barriers (NTBs). Considering that both Parties are currently in the process of amending certain aspects of their respective regulatory frameworks for organic products, the issue of organic product standards, and the recognition of organic products, could be addressed in the context of the negotiations.

In view of the application of *Regulation (EU) 2018/848* as of 1 January 2021, the Commission is expected to adopt new implementing legislation, in particular replacing *Commission Regulation (EC) No 889/2008*. The next step regarding the new organic products rules in New Zealand is to draft an '*Organic Bill*' to be introduced in 2019. According to New Zealand's Minister O'Connor, there would be opportunities for the public and the private sector to provide feedback at the Select Committees (*i.e.*, Committees in the House of Representatives made up of a group of MPs). Food business stakeholders with an interest in the matter should carefully monitor developments in the EU and in New Zealand on organic farming and trade in organic products. The existing equivalence arrangements or agreements in place with third countries will have to "*accommodate the new rules whenever relevant within a reasonable timeframe*", the Commission stated last year. Third country Governments should analyse whether the new EU rules will affect their exports of organic products to the EU and take the necessary steps to continue enjoying access to a premium export market. The ongoing trade negotiations provide an important *forum* to address such issues.

Recently Adopted EU Legislation

Customs Law

- [Commission Implementing Regulation \(EU\) 2019/13 of 4 January 2019 correcting the Dutch language version of Annex I to Council Regulation \(EEC\)](#)

Food and Agricultural Law

- *Commission Implementing Regulation (EU) 2019/12 of 3 January 2019 concerning the authorisation of L-arginine as a feed additive for all animal species*
- *Commission Implementing Regulation (EU) 2019/11 of 3 January 2019 concerning the authorisation of the preparation of *Enterococcus faecium* NCIMB 10415 as a feed additive for sows, suckling piglets, weaned piglets, pigs for fattening, and amending Regulations (EC) No 252/2006, (EC) No 943/2005 and (EC) No 1200/2005 (holder of authorisation DSM Nutritional products Ltd, represented by DSM Nutritional Products Sp. z o.o.)*
- *Commission Implementing Regulation (EU) 2019/10 of 3 January 2019 concerning the authorisation of a preparation of a natural mixture of illite-montmorillonite-kaolinite as a feed additive for all animal species*
- *Commission Implementing Regulation (EU) 2019/9 of 3 January 2019 concerning the authorisation of betaine anhydrous as a feed additive for food-producing animals except rabbits*
- *Commission Implementing Regulation (EU) 2019/8 of 3 January 2019 concerning the authorisation of hydroxy analogue of methionine and its calcium salt as a feed additive for all animal species*

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