FRATINIVERGANO
EUROPEAN LAWYERS
TRADE PERSPECTIVES©

Issue No. 19 of 18 October 2019

- **After authorisation by the WTO Dispute Settlement Body, US countermeasures against certain EU goods apply since "*12:01 a.m. eastern daylight time on October 18, 2019*"**
- **The Mexican Parliament follows trend in Latin America and adopts front-of-pack nutritional warning labels**
- **The important impact of Viet Nam's modernisation of its SPS measures**
- **Recently Adopted EU Legislation**

After authorisation by the WTO Dispute Settlement Body, US countermeasures against certain EU goods apply since "*12:01 a.m. eastern daylight time on October 18, 2019*"

On 14 October 2019, Members of the World Trade Organization (hereinafter, WTO) gathered within the WTO's Dispute Settlement Body (hereinafter, DSB) agreed to grant authorisation to the US to suspend certain tariff concessions vis-à-vis the EU. The authorisation was agreed in line with the decision of the WTO arbitrator, issued on 2 October 2019, in the case of *European Communities and Certain Member States — Measures Affecting Trade in Large Civil Aircraft* (DS316), who concluded that "*the level of countermeasures 'commensurate with the degree and nature of the adverse effects determined to exist' during the 2011-2013 Reference Period amounts to USD 7,496.623 million per annum*". On 9 October 2019, the Office of the US Trade Representative (hereinafter, USTR) published the *Notice of Determination and Action Pursuant to Section 301: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute* in the US Federal Register, which provides the additional duties on EU products and products of certain EU Member States and which apply "*to products that are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on October 18, 2019*". Various sectors in the EU and in the US voiced their concerns regarding the negative impact that the tariffs would have.

This long-standing WTO case started on 6 October 2004, when the US request for WTO dispute settlement consultation was submitted. In its request, the US had claimed that certain subsidies paid to aircraft manufacturer *Airbus* for the production of the Airbus A350 and A380 passenger aircrafts were inconsistent with the EU's obligations under the WTO Agreement on Subsidies and Countervailing Measures (hereinafter, SCM Agreement) and the General Agreement on Tariffs and Trade (GATT) 1994. On 18 May 2011, the WTO Appellate Body upheld the Panel's finding that certain subsidies provided by the EU and certain EU Member State Governments, namely France, Germany, Spain, and the UK, to *Airbus* were incompatible with Article 5(c) of the SCM Agreement because they had caused serious prejudice to the interests of the US. The dispute did not end there, as the US followed-up, in December 2011, by requesting a compliance panel on the basis of Article 21.5 of the WTO Dispute Settlement Understanding (hereinafter, DSU), alleging the failure by the EU and the respective EU Member States to implement the recommendations and rulings adopted by the DSB, as well as a request for countermeasures under Article 22 of the DSU. The compliance panel report was published in 2016, finding that the EU and the respective EU Member States did indeed fail to implement the recommendations and rulings of the DSB to bring their measures into conformity with their obligations under the SCM Agreement. On 28 May 2018, the Compliance

Appellate Body report was adopted by the DSB. The Compliance Appellate Body upheld, albeit for different reasons, the Panel's conclusions that the EU and certain EU Member States had "*failed to comply with the DSB recommendations and rulings*".

In parallel to the compliance proceedings, the US had requested, on 9 December 2011, authorisation by the DSB to take countermeasures under Article 22 of the DSU and Article 7.9 of the SCM Agreement. At a meeting of the DSB on 22 December 2011, the EU objected to the level of suspension of concessions or other obligations contained in the US' request and claimed that the principles and procedures set forth in Article 22.3 of the DSU had not been followed. The EU requested that the matter be referred to arbitration under Article 22.6 of the DSU. In January 2012, in view of the compliance proceedings, the US and the EU requested the arbitrator to suspend its work. Shortly after the decision of the Compliance Appellate Body, the US resumed its pursuit of the authorisation for countermeasures. On 13 July 2018, the US requested the resumption of the work by the arbitrator, who has now reached a decision.

On 2 October 2019, the WTO published the decision by the WTO arbitrator regarding the level of authorised countermeasures that the US could request with respect to the EU and certain EU Member States in relation to the case of *European Communities and Certain Member States — Measures Affecting Trade in Large Civil Aircraft* (DS316). The WTO arbitrator concluded that: 1) With reference to Articles 7.10 of the SCM Agreement, and Article 22.6 of the DSU, the level of countermeasures "*commensurate with the degree and nature of the adverse effects determined to exist*" during the 2011-2013 Reference Period amounted to USD 7,496.623 million per annum; 2) With reference to Article 22.3 of the DSU, the EU had not demonstrated that the US failed to follow the principles and procedures provided in Article 22.3 of the DSU in determining that it is not practicable or effective to suspend concessions or other obligations in trade in goods and that the circumstances are serious enough; and 3) With reference to Article 22.5 of the DSU, the EU had not demonstrated that the countermeasures proposed by the US are not allowed under the covered agreements at issue, namely the GATT and the General Agreement on Trade in Services. Finally, the decision states that these "*countermeasures may take the form of (a) suspension of tariff concessions and related obligations under the GATT 1994, and/or (b) suspension of horizontal or sectoral commitments and obligations contained in the United States' services schedule with regard to all services defined in the Services Sectoral Classification List, except for financial services*" (see *Trade Perspectives*, Issue No. 18 of 4 October 2019).

On 14 October 2019, at a meeting of the DSB, WTO Members agreed on the authorisation to the US to implement countermeasures on EU goods and services trade with the US. According to the WTO's meeting summary, at the meeting, the US stated that the large amount awarded by the arbitrator supported "*the US point that the EU's subsidies to Airbus have for decades caused massive harm to the US economy*". The US added that it remained "*the US preference to find a negotiated outcome with the EU that ends all WTO-inconsistent subsidies*", but noted that a negotiated outcome could only happen "*if the EU genuinely terminates the benefits to Airbus from current subsidies and ensures that subsidies to Airbus cannot be revived under another name or another mechanism*". Reacting to the statements by the US, the EU noted that the arbitrator's decision raised five serious concerns: 1) That there is no analysis in the report "*of the amount of benefit or the alleged price effects*"; 2) That "*awarding recurring annual countermeasures for an indefinite period in response to non-recurring measures*" was "*a breach of the rule that countermeasures must be commensurate with the degree and nature of adverse effects*"; 3) That the award "*disregards the risk of over-counting resulting from cumulating nullification or impairment from both orders and deliveries at the same time*"; 4) That the "*award contains a finding that the hypothetical impedance associated with six country markets where impedance was found coincides with the total number of aircraft that Airbus sold in those markets, without any US effort to substantiate that assertion*"; and 5) That "*the award systematically avoids taking into account the treaty terms that support the view that the volume effects of competing subsidies cancel each other out*".

At the DSB meeting, the EU pointed out that, in the parallel *United States — Measures Affecting Trade in Large Civil Aircraft — Second Complaint* (DS353) relating to *Boeing* aircraft,

the EU "*had obtained findings*" that the US was "*out of compliance with respect to both Washington State tax subsidies and FSC tax breaks*". The EU is currently also pursuing a decision by a WTO arbitrator regarding the *Boeing* case and noted its expectation that the same principles applied by the arbitrator in the *Airbus* case (DS316) would also be applied in the *Boeing* case (DS353). Finally, the EU warned "*that applying countermeasures now would be short-sighted*", since "*both the EU and the US have been found at fault by the WTO dispute settlement system, and the mutual imposition of countermeasures would only harm global trade and the broader aviation industry*". In reaction to the decision by the WTO DSB, on 14 October 2019, the European Commissioner for Trade, *Cecilia Malmström*, stated that tariffs were neither good for the economy nor for consumers and warned that both the EU and the US risked "*escalating a situation that is unfortunate*".

Regardless of its purported interest of preferring a negotiated solution, the US has now implemented countermeasures on a list of products. Shortly after the decision of the arbitrator became public, on 2 October 2019, the US published a preliminary list of products that would be subject to additional duties, some of which apply only to the four EU Member States that were targeted in the complaint (*i.e.*, France, Germany, Spain, and the UK), while others apply to all EU Member States. On 9 October 2019, the US then published the definitive list of products in the US Federal Register. The additional tariffs apply since 18 October 2019 and amount to an additional 25%, except for new airplanes and other new aircraft from France, Germany, Spain, or the UK, for which an additional duty of 10% applies. The US is also imposing the additional tariffs of 25% on a large number of agricultural products from all EU Member States, such as citrus fruits, yoghurt, butter and butter substitutes, pork ham, and a multitude of cheeses, such as Cheddar, Parmigiano Reggiano, Provolone, etc., as well as on a number of industrial goods. Additional duties of 25% on olive oil apply to products from France, Germany, and the UK, and additional duties of 25% on olives apply to products from France, Germany, Spain, and the UK. The same applies to wines, other than Tokay, from France, Germany, Spain, and the UK under 14% alcohol by volume and that are noncarbonated, as well as further specific products from Germany, such as roasted coffee, sausages and machinery.

Importantly, the list published in the Federal Register shows a number of omissions vis-à-vis the list published on 2 October 2019. For instance, while the original list contained an entry for "*processed cheeses made from sheep's milk*", the definite list does not contain it. This omission appears due to protests from Greece, which sought to protect its *Feta* cheese, and successfully negotiated with the US that this cheese be excluded from the list.

EU and US industries continue to underline their concerns regarding the upcoming additional tariffs. According to EU wine producers, the loss in the US market share for France, Germany, Spain, and the UK would take a long time to recover. In 2018, Spain's wine and cheese exports to the US amounted to a value of more than EUR 1 billion. Similarly, the EU food industry confederation *FoodDrinkEurope* stated that "*Europe's food and drink manufacturers, 99% of which are small and medium-sized enterprises, could end up paying the price for a dispute originating in a completely unrelated sector*". The US Distilled Spirits Council stated that the new tariffs would have "*numerous unintended negative consequences*", which would have an impact on jobs and consumers in the US, as well as on US businesses operating in the EU wine and spirits industry. According to an analysis by the trade association, US tariffs on Irish and Scotch Whiskies, liquors, cordials, and wine could impact almost USD 3.4 billion in imports into the US.

The imposition of countermeasures by the US in the *Airbus* case adds to the tensions in EU-US trade policy. Businesses on both sides of the Atlantic should closely monitor the related developments, which will significantly affect trade and supply chains. Businesses should also start assessing the possible impact that the likely upcoming EU '*retaliatory duties*' on US products will have on their products and put in place the necessary measures and advocacy initiatives to minimise it.

The Mexican Parliament follows trend in Latin America and adopts front-of-pack nutritional warning labels

On 1 October 2019, the Mexican Parliament (*i.e.*, *Cámara de Diputados*) approved with 458 votes in favour, zero against, and two abstentions, the Opinion on the project for a decree that reforms the General Health Law (*i.e.*, *Dictamen sobre el proyecto de decreto por el que se reforma la Ley General de Salud*), and thereby approved mandatory front-of-pack (hereinafter, FoP) nutrition labelling warning messages on food and non-alcoholic beverages. The measure, which seeks to combat overweight and obesity, establishes, *inter alia*, that the FoP labelling must warn, truthfully, clearly and simply, if the product exceeds maximum levels of energy content, sugars, salt, fats, and critical nutrients.

The Mexican Member of Parliament *Miroslava Sánchez Galván* justified the decree in Parliament on 1 October 2019, referring to the situation of obesity, overweight, and diabetes in the Mexican population. According to the Organisation for Economic Co-operation and Development (OECD), about 35% of Mexican children and adolescents are overweight or obese, and, in the case of adults, the figure increases to 71%. MP *Sánchez Galván* stressed that diabetes mellitus, which in 2006 affected 9.2% of the Mexican population, today had "*reached approximately 9.4% of our population, which is equivalent to more than seven million people*".

According to the approved decree amending the General Health Law, food labels and labels of non-alcoholic beverages must include FoP nutrition labelling warning messages, separately and independently to the declaration of ingredients and nutritional information, to indicate products that exceed maximum limits of energy content, added sugars, saturated fats, sodium, and other critical nutrients and ingredients that are to be determined by the Ministry of Health. '*Critical nutrients*' are defined as those components of food that may be a risk factor for chronic non-communicable diseases, and which will be determined by the Ministry of Health. The Decree provides that the "*Ministry of Health may order the inclusion of legends or pictograms, when deemed necessary*". The text also notes that the Ministry of Health would consider that international treaties and conventions to which Mexico is a party, include labelling matters and have been concluded in accordance with the provisions of the Constitution.

MP *Sánchez Galván* pointed out that the recommendations of international health organisations concluded that the current nutrition labelling used "*incorrect reference values and has not been shown to be understood by the population of our country*", adding that "*regulating the FoP warning labelling is a way of making the right to health of consumers possible and accessible, since far from being a prohibitive regulation, it recognises that the FoP labelling is the only source of information that consumers have at the point of sale, so it is important that they are able to locate, read, interpret and understand the information presented in order to make a series of decisions regarding the food and drinks they consume*". This description of the consumer appears to be quite different from the term of '*average consumer*' used in the EU, that is one that is reasonably well informed, reasonably observant, and circumspect.

With its measure on FoP nutrition labelling warning messages, Mexico follows a trend in Latin American countries that already adopted such FoP labels for food and beverages in the last years, like Chile, Peru and Uruguay. On 21 March 2019, Uruguay's Ministry of Public Health had published its *Manual for the application of Decree No. 272/018 on FoP labelling* (*i.e.*, *Manual para la aplicación del Decreto Nº 272/018 sobre rotulado frontal de alimentos,* in Spanish). The related FoP labels are black and white octagons that state '*excess in …*', followed by the corresponding nutrient. Uruguay's Manual for the application of FoP nutrition labelling has the objective of establishing a guideline for the proper implementation by the competent authorities of *Decree No. 272/018 of the Presidency of the Republic establishing FoP nutrition labelling of pre-packaged foods, whose final composition exceeds certain values of sodium, sugars, fats or saturated fats*, which had been adopted on 30 August

2018, as well as to provide technical guidance to companies producing and importing packaged foods (see *Trade Perspectives*, Issue No. 7 of 5 April 2019).

Prior to Uruguay, a number of other Latin American countries had already taken measures to reduce the intake of salt, fats, and sugar with the purpose of reducing obesity or improving their citizens' nutrition. In 2015, the Government of Chile adopted *Decree No. 13 of 16 April 2015* (hereinafter, Decree 13/2015) amending Chile's Food Health Regulation (*i.e.*, *Reglamento sanitario de los alimentos*). Decree 13/2015 also requires warning messages in the shape of a black octagon with the form of a '*STOP*' sign to be placed on the FoP with the text '*High in…*', when food products or beverages exceed certain levels of energy, sodium, sugars, or saturated fats (see *Trade Perspectives*, Issue No. 16 of 11 September 2015). Since 16 June 2018, food manufacturers operating in Peru and importers have had to include warning labels on the packaging of and adverts for products with high levels of salt, sugar, and fats. On 16 June 2018, the Peruvian Government published, through a Decree (*i.e.*, *Decreto Supremo Nº 017-2017-SA*), its Advertising Warnings Manual (*i.e.*, *Manual de Advertencias Publicitarias*), constituting the final stage in the application of the *Law concerning the Promotion of Healthy Nutrition for Boys, Girls, and Teenagers* (*i.e.*, *Ley Nº 30021 de promoción de la alimentación saludable para niños, niñas y adolescentes*). According to the Decree, by 16 June 2019, businesses had to comply with the new warning labels. Already in 2013, Ecuador introduced a *Sanitary Labelling Regulation for processed food* (*i.e.*, *Reglamento Sanitario de Etiquetado de Alimentos Procesados para el Consumo Humano*), which provides that, in addition to the nutritional information, a graphic system must be placed on processed food products with horizontally placed colour bars. These colours are red, yellow and green, depending on the concentration of the nutritional components (*i.e.*, total fats, sugars, salt). The red bar is assigned to a high content of a component and carries the phrase '*High In ...*', the yellow bar is assigned to a medium content of a component and carries the phrase '*Medium In ...*', and the green bar is assigned to a low content of a component and carries the phrase '*Low In ...*'. Discussions on implementing FoP schemes appear to be ongoing in Brazil, Argentina, and Paraguay (see *Trade Perspectives*, Issue No. 16 of 7 September 2018).

The question arises whether the various measures imposing FoP nutrition warning labels, including the warning messages on food now adopted by Mexico, comply with international trade law. With respect to these measures, as WTO Members, the different Governments are required to comply with the transparency obligation set out in Article 2.9 of the WTO Agreement on Technical Barriers to Trade (hereinafter, TBT Agreement) by notifying them to the WTO. Arguably, the different FoP nutrition labelling schemes present the characteristics of a technical regulation, as defined in Article 1 of Annex 1 to the TBT Agreement, which states that a technical regulation is a document that lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. According to Article 2.2 of the TBT Agreement, WTO Members must ensure that technical regulations do not create unnecessary obstacles to international trade. For this purpose, technical regulations must not be more trade-restrictive than necessary to fulfil a legitimate objective. It would have to be determined if the different measures' objectives could be addressed and achieved by more effective and less trade-restrictive public policies. Other less trade-restrictive information measures (such as launching campaigns to encourage the population to eat healthily and promoting physical activity programmes or more harmonised labels) also appear to be available for consideration.

Article 2.4 of the TBT Agreement provides that technical regulations must be based on the relevant international standards. Section 5 of the *Codex Alimentarius Guidelines on Nutrition Labelling* (CAC/GL2-1985) recommends, in relation to supplementary nutrition information, that it should intend to increase consumers' understanding of the nutritional value of their food and that it should assist in interpreting the nutrient declaration. Section 3.5 of the *Codex Guidelines on Nutrition Labelling*, concerning '*tolerances and compliance*', may also be relevant. It does not establish nutrient thresholds for the nutrients targeted by the different measures. In spite of the evidence of a positive association between the intake of certain nutrients and the risk of developing a disease or disorder, there is no scientific evidence suggesting that there is an identifiable threshold above which such risk exists. On this basis,

considering that they set such specific nutrient thresholds, the measures across Latin America would arguably contradict Section 3.5 of the *Codex Guidelines on Nutrition Labelling*.

Additionally, the manner through which the measures pursue their alleged legitimate public health objective is arguably incompatible with the list of prohibited claims under Section 3 of the *Codex General Guidelines on Claims* (CAC/GL 1-1979). Section 3.5 of these guidelines prohibits "*claims which could give rise to doubt about the safety of similar food or which could arouse or exploit fear in the consumer*". '*High in*' or even '*Excess in*' warnings, such as those in Chile's, Mexico's, Peru's and Uruguay's legislation, should be avoided, as they are not foreseen by the applicable *Codex Guidelines on Nutrition Labelling*, and they risk demonising some foods, whose moderate consumption could be part of a healthy diet. It must be noted that, arguably, '*stop signs*' or '*traffic lights*' on the FoP of a product could also be considered as a sort of '*non-beneficial*' nutrition claim, inasmuch as the whole FoP nutrition label may be interpreted as a claim that this product is nutritionally disadvantageous. Such claims are arguably not legal under *Codex Alimentarius* and EU food law. Still, in the EU, in 2013, the European Commission considered the UK's voluntary '*traffic light*' nutrition labelling scheme as voluntary nutritional information and not as an illegal '*non-beneficial*' nutrition claim. Other EU Member States, like Belgium, France, Germany, and Spain are implementing yet another voluntary colour coding scheme, the '*Nutri-Score*' (see *Trade Perspectives*, Issue No. 16 of 7 September 2018 and Issue No. 18 of 4 October 2019).

One of the main issues regarding FoP nutrition labelling is the lack of global consistency, despite high-level WHO recommendations and *Codex Guidelines*. Already in October 2017, the *Codex Alimentarius Committee on Food Labelling* noted that there was a need for international guidelines on best practices for FoP labelling, which would provide clear and transparent scientific guidance to Governments. It also noted that new work on FoP labelling would help in harmonising FoP labelling and should provide a definition for FoP labelling and fundamental principles for monitoring and assessing the effectiveness of such schemes. Such definition should be scientifically substantiated, voluntary, and exclusively applicable to processed foods (possibly with a number of exceptions). Furthermore, FoP labelling should provide consumers with accurate and transparent nutrition information to help them make informed decisions (see *Trade Perspectives*, Issue No. 20 of 3 November 2017). At the 45th Session of the *Codex Alimentarius Committee on Food labelling* in May 2019, Costa Rica and New Zealand presented *Proposed Draft Guidelines on Front-of-Pack Nutrition Labelling*. In response, the EU and its Member States presented detailed comments and recommendations on the draft guidelines, suggesting the inclusion of the guidelines, once finalised, in the existing *Codex Guidelines on Nutrition Labelling*. The EU supports the recommendation that *Codex* work should be able to take into consideration the WHO Guiding Principles in this area. The *Codex Alimentarius* Commission is working on the technical details of a guidance on providing simplified FoP nutrition information to consumers, so as to enable them to identify healthier dietary choices, while avoiding creating unnecessary obstacles to food trade.

In Mexico, the draft decree on FoP nutrition labelling will now go to the Senate. The Second Transitory article of Mexico's draft decree states that the Federal Executive would make the corresponding regulatory adjustments within 180 days after the decree is published. If approved by the Senate, Mexico's Ministry of Health would further develop the regulation, defining '*critical nutrients*', establishing maximum limits of energy content, added sugars, saturated fats, sodium, and other critical nutrients and ingredients, as well as the establishment of legends or pictograms for the FoP nutrition labelling. A time frame for enforcement has not been set.

With the global trend of FoP nutrition labelling schemes, it appears very important that a certain degree of consistency or harmonisation be maintained (or achieved) in order to ensure that: 1) Consumers are not misled; 2) Such labelling systems do not distort or restrict trade, particularly in protectionist fashion; and 3) It does not distort competition. Stakeholders in the agri-food sector in Latin America, as well as trading partners around the world, should monitor developments on FoP nutrition labelling and take action to ensure that their legitimate interests

are voiced and represented within all relevant *fora*, including the *Codex Alimentarius* and the WTO.

The important impact of Viet Nam's modernisation of its SPS measures

Viet Nam is a low-middle income country of around 94 million inhabitants, which shares a long tradition of trade cooperation with the EU and the US. Based on data from the World Bank, Viet Nam's economy grew at an average annual rate of 6,5% from 1991 to 2017, it scored its highest performance in eleven years in 2018, reaching a growth rate of 7,08% and a further increase is expected in 2019. This positive trend has multiplied the trade in foodstuffs and has given rise to a middle class with higher expectations and increasing concerns about hygiene and quality of food. These increasing concerns have led the Government of Viet Nam to make important changes in its legislation, *inter alia* by modernising its sanitary and phytosanitary measures (hereinafter, SPS measures). This article provides an overview and assessment of recent changes in Viet Nam's SPS legislation.

The strong economic gains have initially been triggered by a plan of market-oriented reforms and the gradual integration into the multilateral trading system, with Viet Nam having become a Member of the World Trade Organization (hereinafter, WTO) in 2007. Two other key elements fostering the country's development were the negotiation of a series of bilateral trade agreements with key trading partners and the integration to the Association of Southeast Asian Nations (hereinafter, ASEAN) in 1995. Viet Nam's full ASEAN membership has provided access to a free trade area of around 650 million people and to all the economic and social benefits ensuing from the Free Trade Agreements (hereinafter, FTA) signed by ASEAN with several third countries. Although the share of trade with the nine ASEAN partners is increasing, China, Korea, and the US are still Viet Nam's largest trading partners.

Currently, bilateral commercial relations between Viet Nam and the EU are governed by the Comprehensive Partnership and Cooperation Agreement and Viet Nam benefits from preferential market access to the EU on the basis of the EU's Generalised Scheme of Preferences (GSP). However, on 30 June 2019, the EU and Viet Nam signed a comprehensive FTA and an Investment Protection Agreement. Following the ratification of the EU-Viet Nam FTA, 99% of customs duties on goods will be successively eliminated. The EU-Viet Nam FTA is the second agreement concluded between the EU and an ASEAN Member State, after the one with Singapore (see *Trade Perspectives*, Issue No. 17 of 20 September 2019). Similarly, the US and Viet Nam concluded a bilateral trade agreement in 2000, involving an average decrease of tariffs from 40% to 3%.

Since the start of negotiations for acceding to the WTO in 1995, Viet Nam has started improving its standards in the agro-based sector in order to comply with the WTO Agreement on the Application of the Sanitary and Phytosanitary Measures (hereinafter, SPS Agreement). The effort to adhere to international standards and the increasing concerns of the domestic population required the modernisation of a series of national provisions. The overarching rule governing Viet Nam's food law is defined in the *Law on Food Safety 55/2010/QH12* (hereinafter, FSL), which entered into force on 1 July 2011 and lays down the rights, obligations, responsibilities and conditions to ensure food safety. The FSL addresses food production and trading, food import and export, food advertisement and labelling, food testing, risk analysis, risk prevention and how to deal with food safety incidents, as well as information, education and communication.

The implementation of the FSL is carried out by *Decree 15/2018/ND-CP* of the Government of Viet Nam of 2 February 2018 (hereinafter, Decree 15/2018), which brought fundamental changes in relation to the registration and inspection of domestic and imported foodstuffs and divides the responsibility of risk management between the Ministry of Health, the Ministry of Agriculture and Rural Development, and the Ministry of Industry and Trade. Decree 15/2018 also establishes a new set of simplified rules for pre-packaged and processed foods, food additives and food processing aids, as well as a simplified regime of import inspections consisting of three methods for all imports, which reduces the amount of required sampling

and switches to post-clearance inspection: 1) Reduced inspections; 2) Tightened inspections; and 3) Normal inspections.

The handling of administrative violations in food production, food trade, food import and export has also become a priority for the Government of Viet Nam. In particular, *Decree 115/2018/ND-CP* of 4 September 2018, repealing *Decree 178/2013/ND-CP,* imposed additional sanctions and increased fines for food businesses and individuals in violation of food safety rules, such as using materials or products of unclear origin or expired goods or materials coming from animals or plants not yet quarantined for food production.

Viet Nam has also undertaken further steps in several areas of food-related chemical substances. In relation to food additives, Viet Nam's Ministry of Health has issued, on 30 November 2012, a *Guidance on the Management of Food Additives 115/2018/ND-CP* and has amended *Circular 8/2015/TT-BYT* of 11 May 2015, which updated maximum levels of food additives and increased the total number of food additives allowed for use in food to 407. Concerning pesticides, *Circular 50/2016/TT-BYT*, issued by the Ministry of Health on 30 December 2016, replaced section eight of *Decision 46/2007/QD-BYT* issued in 2007 and updated the applicable Maximum Residue Levels (hereinafter, MRLs) for 205 compounds in a wide range of foods, while the *Law on Plant Health 41/2013/QH13* entrusted the Ministry of Agriculture and Rural Development with the supervision of the related registration process. Additional MRLs for veterinary medicine in food are regulated by *Circular 24/2013/TT-BYT* issued by the Ministry of Health on 14 August 2013, which amended the MRLs for veterinary medicines in certain products of animal origin starting from 17 July 2017.

The labelling of food, beverages, and agricultural products is subject to the requirements of *Decree 43/2017/ND-CP* of the Government of Viet Nam, issued on 14 April 2017, which provides obligations for all categories of food, beverages, and agricultural products circulating in Viet Nam. With some exceptions, labels must be written in Vietnamese and must indicate the following mandatory information: 1) Name of the good; 2) Name and address of the enterprise responsible for the good; 3) Origin of the good; and 4) Additional details in conformity with the nature of the good. In addition to the general labelling requirements, the following specific information must be displayed in the case of the presence of food additives: 1) The class name and international code, stated next to the name of the food additive; 2) If two or more food additives are present, their name must be indicated completely in the order of proportion by weight; and 3) The phrase "*use for food*" below the name of the food additive. In case of irradiated food, the mandatory labelling content must be complemented by the phrase "*irradiated food*" or by the internationally recognised symbol for irradiated food.

Functional foods must indicate the following additional information: 1) The specific phrase for the relevant sub-group defined by the legislation (*i.e.*, food supplements, health supplements, food for special medical purposes, or food for special dietary use) and the nutrient contents; 2) For food supplements, the label must include: a) The purpose of use; b) Product utility; c) Dosage; and d) Special precautions and side effects; 3) For food for special medical purposes and special dietary uses, the label must include directions of use and special precautions; and 4) For health supplements, food supplements, and dietary supplements, after indicating the product's effects, the following phrase must be indicated "*this product is not a medicine nor effective to replace a medicine*".

The labelling of genetically engineered food is regulated by the *Joint Circular 45/2015/TTLB-BNNPTNT-BKHCN* issued by the Ministry of Agriculture and Rural Development and by the Ministry of Science and Technology on 23 November 2015. The Circular applies to pre-packaged foods containing at least one genetically engineered ingredient that represents at least 5% of the total ingredients of the product. In all such cases, the phrase "*genetically engineered*" must be indicated next to the name of the genetically engineered component. The Circular does not apply to the following cases: 1) Food carried by people for personal use upon entering Viet Nam, food in diplomatic bags, food temporarily imported for re-export, food in bonded warehouses, food used as a sample for testing and research, food used during exhibitions or trade shows; and 2) Materials, food additives, food processing aids, and food

packaging materials imported for internal production that are not for sale on the market or for internal transportation among warehouses of an enterprise.

Notably, Viet Nam is a growing market for high value consumer-oriented goods, edible fishery and seafood products. Global fish and seafood exports to Viet Nam sharply increased from USD 2.5 billion in 2012 to USD 5.3 billion in 2016. Therefore, *Circular 4/2015/TT-BNNPTNT* issued by the Ministry of Agriculture and Rural Development implemented specific standards for imports. In particular, its Appendix 5 provides a list of live aquatic animals allowed for human consumption in Viet Nam. *Circular 4/2015* also regulates the field of agricultural products and *Government Decree 187/2013/ND-CP*, issued on 20 November 2013, lays down guidance on the import and export of, inter alia, plant varieties, breeding animals, live aquatic animals used for food, plant protection products and materials included in the list of plant articles subject to pest risk analysis before being imported into Viet Nam, and genetic resources of plants used for scientific and technical study and exchange.

As a general requirement, *Decree 15/2018*, requires foreign countries to register in the list of countries approved for food export to Viet Nam. Additionally, exporters of food derived from aquatic animals and terrestrial animals, with the exception of processed and pre-packaged products, are required to register in the list of facilities approved by Viet Nam's competent authorities. However, as of December 2018, the Department of Animal Health has not yet provided a clear and comprehensive definition of the expression "*processed product*". The application, to be submitted to Viet Nam's Department of Animal Health, requires from exporting countries: 1) Information on their management and capacity related to food safety control; 2) A list of exporters intending to export food derived from terrestrial animals or aquatic animals to Viet Nam; and 3) Information about the establishments' food safety conditions. Rules on product registration for exports to Viet Nam differ based on the type of goods. For foodstuffs of animal origin and seafood, establishments are required to list all types of products intended for export to Viet Nam. Processed and pre-packaged food, food additives, food processing aids and food containers have access to a simplified procedure. Pursuant to *Decree 15/2018*, food enterprises are allowed to produce, import, and sell such products immediately after publication through mass media, the producer's website, or on the producer's premises, of the product self-declaration documentation. A product declaration is also required for genetically engineered plants intended for use as food and feed, health supplements and dietary products, while products and raw materials imported for processing, for re-export, or for internal production and which are not for domestic sale, are exempted.

Due to a multitude of factors, such as a large, young, and growing population, strong and stable economic growth, greater interaction with other economies, increasing disposable income and public food safety concerns, Viet Nam is a growing market for consumer-oriented agro-based products. Since its WTO accession, Viet Nam has also had the opportunity to increase trade with more markets, but only if Viet Nam is able to fulfil the requirements and expectations of its trading partners, it will have the opportunity to benefit from greater exports.

Viet Nam's regulatory framework is sometimes complex, and the 129 cases of serious food poisoning reported by Viet Nam's Ministry of Health in 2018, might suggest that Viet Nam's SPS measures are not yet performing as they should. Additionally, regulations in Viet Nam still change too frequently, their enforcement does not always appear to be consistent and they might be interpreted differently from one area of the country to another. Certain rules do not equally apply to all imports due to legislative gaps, as the absence of an official definition for the expression "*processed food*" shows.

Viet Nam's accession to the WTO has given the country a substantial boost to the modernisation of its regulatory framework on food safety. Even if the process of alignment with international standards is still not completed, the substantial increase of international trade indicates that Viet Nam is on the right path. If remaining gaps were to be filled with the assistance offered by the international community, for instance in the framework of the *Codex Alimentarius* or the EU's international cooperation and development programmes, Viet Nam would be able to further unlock the potential coming from the recent open market policy and to

fully take advantage of the ASEAN Free Trade Area and from recently concluded trade agreements, such as the landmark EU-Viet Nam Free Trade Agreement.

Recently Adopted EU Legislation

Customs Law

- *Corrigendum to Commission Implementing Regulation (EU) 2019/1295 of 1 August 2019 amending Implementing Regulation (EU) 2018/1469 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine, following a partial interim review pursuant to Article 11(3) of Regulation (EU) 2016/1036*

Trade Remedies

- *Commission Implementing Regulation (EU) 2019/1706 of 10 October 2019 amending Implementing Regulation (EU) 2017/325 imposing a definitive anti-dumping duty on imports of high tenacity yarns of polyesters originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*

- *Commission Implementing Regulation (EU) 2019/1693 of 9 October 2019 imposing a provisional anti-dumping duty on imports of steel road wheels originating in the People's Republic of China*

- *Commission Implementing Regulation (EU) 2019/1688 of 8 October 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America*

- *Commission Implementing Regulation (EU) 2019/1687 of 8 October 2019 amending Annex 1 to Implementing Regulation (EU) 2017/2179 imposing a definitive anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China*

Food and Agricultural Law

- *Commission Decision (EU) 2019/1732 of 6 June 2019 on SA.33159 (2015/C) — Taxation of saturated fat in certain food products sold in Denmark*

- *Commission Implementing Regulation (EU) 2019/1726 of 15 October 2019 operating deductions from fishing quotas available for certain stocks in 2019 on account of overfishing in the previous years*

- *Commission Implementing Regulation (EU) 2019/1714 of 30 September 2019 amending Regulations (EC) No 136/2004 and (EC) No 282/2004 as regards the model of common veterinary entry document for products and animals and amending Regulation (EC) No 669/2009 as regards the model of common entry document for certain feed and food of non-animal origin*

- *Commission Implementing Regulation (EU) 2019/1704 of 9 October 2019 adding to the 2019 fishing quotas certain quantities withheld in the year 2018 pursuant to Article 4(2) of Council Regulation (EC) No 847/96*

- *Commission Implementing Regulation (EU) 2019/1686 of 8 October 2019 authorising the extension of use of bovine milk basic whey protein isolate as a novel food under Regulation (EU) 2015/2283 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) 2017/2470*

Other

- *Decision 2019/1734 of the eu-korea committee on trade and sustainable development of 30 September 2019 on a revised list of experts willing and able to serve as panellists in accordance with Article 13.15 of the Agreement*

- *Commission Delegated Regulation (EU) 2019/1701 of 23 July 2019 amending Annexes I and V to Regulation (EU) No 649/2012 of the European Parliament and of the Council concerning the export and import of hazardous chemicals*

Ignacio Carreño, Fabrizio De Angelis, Tobias Dolle, Lourdes Medina Perez and Paolo R. Vergano contributed to this issue.

Follow us on twitter @FratiniVergano

To subscribe to or unsubscribe from *Trade Perspectives*©, please click here.