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New approach to trade negotiations – The Council of the EU is set to adopt conclusions on the negotiation and conclusion of EU trade agreements

On 22 May 2018, the Council of the EU (hereinafter, Council) is set to adopt the ‘*Council conclusions on the negotiation and conclusion of EU trade agreements*’. The [draft](#) of these conclusions was made public on 8 May 2018 and provides important insights into the position of EU Member States on EU trade agreements. In particular, the Council focuses on the future approach to separate agreements on trade and investment, respectively, as well as its own involvement in trade negotiations and the involvement of EU Member States, EU Member States’ parliaments, civil society and other interested stakeholders. At the same time, the EU continues negotiating new trade agreements and is expected to launch further negotiations shortly.

At the beginning of the draft Council conclusions, the text notes that the EU was “*committed to a robust, effective and credible trade policy*”. But indeed, developments in recent years have not exactly underlined an effective or credible trade policy: negotiations advanced at a slow pace (as in the case of the EU-Mercosur negotiations), were temporarily blocked shortly before their conclusion (as in the case of the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada), or, for years, were left in a state of ambiguity due to legal uncertainty on the competences to conclude the trade agreements (as in the case of the EU-Singapore Free Trade Agreement). The EU now appears determined to move on from these issues and readjust its approach to trade negotiations and to the conclusion of EU trade agreements. After months of discussions (see [Trade Perspectives, Issue No. 4 of 23 February 2018](#)), the draft Council conclusions now lay out the Council’s position on a number of key aspects. The main elements of the conclusions concern the future approach to trade negotiations: 1) The separation along the lines of competences, which essentially means a separation of trade and investment agreements; 2) The process of negotiating two separate agreements, one on trade and another on investment; 3) The involvement of the Council and of EU Member States, including in cases of agreements falling entirely under EU competence; and 4) The involvement of EU Member States’ parliaments, civil society and interested stakeholders.

In general terms, the EU’s common commercial or trade policy is one of the main cornerstones of EU external policy and an exclusive EU competence on the basis of Article 3 of the Treaty on the Functioning of the European Union (TFEU). While the EU’s Lisbon Treaty extended this competence to cover foreign direct investment, in May 2017, the Court of Justice of the EU published its opinion on the competences regarding the EU-Singapore

Free Trade Agreement (hereinafter, EUSFTA), determining that the provisions of the agreement relating to non-direct foreign investment and those relating to dispute settlement between investors and States do not fall within the exclusive competence of the EU, so that the EUSFTA could not, as it was proposed by the European Commission (hereinafter, Commission), be concluded without the ratification by EU Member States' national parliaments (see *Trade Perspectives*, [Issue No. 10 of 19 May 2017](#)).

Shortly thereafter, the Commission began to reflect on its future approach to negotiating trade agreements and it became clear that the Commission would propose to split future EU trade agreements into two separate agreements, one on trade and entirely within EU competences, and one on investment, relying also on competences shared between the EU and EU Member States (see *Trade Perspectives*, [Issue No. 15 of 28 July 2017](#)). In its draft conclusions, the Council now notes its general agreement with the Commission's new approach, underlining that this new approach aimed at "*strengthening the EU's position as a negotiating partner*". At the same time, the Council appears determined to hold on to its powers, adding that it was for the Council to decide, "*on a case-by-case basis, on the splitting of trade agreements*". On a separate note, the Council confirms that the EU's association agreements, which typically contain a trade agreement, should remain so-called '*mixed*' agreements, including the trade parts, meaning that they fall under EU and EU Member States competences and must be ratified by the EU, as well as by EU Member States. This is important, as it concerns key agreements currently under (re-)negotiation, such as the EU-Mexico agreement, the EU-Mercosur agreement, as well as the EU-Chile agreement. Finally, the Council underlines an important aspect for future negotiations, namely that, in the future, negotiations for trade agreements, as well as for investment agreements, should be conducted in parallel. In this regard, the Council conclusions criticise the Commission for its approach on the proposed negotiating directives for the negotiations with Australia and New Zealand, where the Commission had not presented recommendations for negotiating directives for investment agreements, alongside the recommendations for the FTAs (see *Trade Perspectives*, [Issue No. 17 of 22 September 2017](#)). The Council underlines that this "*should not set a precedent for the future*". Indeed, the Council has yet to adopt those negotiating directives, submitted by the Commission in September 2017, but a decision is now expected at one of the next Council meetings in May or June of this year.

The second overarching issue addressed by the draft Council conclusions concerns the Council's involvement in trade negotiations, as well as the involvement of EU Member States, EU Member States' parliaments, civil society and other interested stakeholders in trade negotiations. Firstly, considering the Council's role in the negotiation process of trade agreements, from adopting the negotiating directives, before negotiations begin, to the decisions on the conclusion and signature of the agreements, once negotiations have concluded, the Council requests to "*be kept fully informed by the Commission and be duly consulted throughout all the stages of the negotiating process of FTAs, namely from the scoping exercise until after an agreement in principle is reached, including where the agreement falls entirely within the EU's competence*". The Council notes that this would then allow EU Member States' governments to consult national parliaments and domestic stakeholders. However, the draft Conclusions remain, perhaps intentionally, vague concerning the involvement of national parliaments with respect to the Council's decisions on the conclusion and signature of trade agreements under EU competences. In February 2018, it appeared that certain EU Member States were considering a ratification process '*through the backdoor*' for such agreements, relying on national parliaments to hold a vote authorising the respective Government's approval of the respective trade agreement in the Council. The draft conclusions now state that "*the decisions on signature and conclusion are taken by the Council*" and that "*this process allows Member States' governments to consult their national parliaments*". How and with what role national parliaments are then consulted by EU Member States governments will be for the individual EU Member States to decide. However, the absence of clear language in this regard in the draft Council conclusions might already foreshadow future contentions and delays.

The involvement of EU Member States' parliaments, civil society and other interested stakeholders is the second aspect addressed by the Council. While emphasising the benefits and needs for this involvement, the Council itself falls short of committing to increased transparency. The Commission has recently started to make its proposals for negotiating directives public, but the Council stated that a decision on releasing the adopted negotiating directives to the public was "*exclusively for the Council to make, on a case-by-case basis*".

As the EU continues its internal debate on the process and procedures of negotiating trade and investment agreements, negotiations continue, and additional negotiations are being considered by the Commission. EU negotiations with Mercosur are scheduled to resume during the course of this month in Paraguay. However, the sensitivity of some of the remaining issues (see *Trade Perspectives*, [Issue No. 3 of 9 February 2018](#)) continues to delay the conclusion of the negotiations. While Brazil's President Michel Temer stated earlier in May that the EU-Mercosur negotiations were "*practically done*", the European Commissioner for Trade Cecilia Malmström recently mentioned that she expected concluding negotiations with Mercosur "*this year*". Earlier in May, the EU Ambassador to Thailand voiced his optimism that trade negotiations, currently on hold since the political crisis in 2014, could resume after the Thai elections scheduled for November of this year. As already mentioned above, Australia and New Zealand are still waiting to begin negotiations with the EU, more than one year after the so-called 'scoping exercises' had been concluded and more than half a year after the Commission had proposed the respective negotiating directives to the Council. Finally, considering the current controversy over steel and aluminium tariffs with the US (see *Trade Perspectives*, [Issue No. 9 of 4 May 2018](#)), the EU appears open to negotiate a "*limited*" trade agreement with the US, on the precondition that the US grant the EU a full exemption from the recently introduced tariffs. In 2016, the US presidential elections had abruptly brought a halt to the negotiations of a comprehensive Transatlantic Trade and Investment Partnership (hereinafter, TTIP) agreement. On 4 May 2018, the European Commissioner for Trade Cecilia Malmström stated that a trade agreement with the US would be something "*totally different*" from the ambitious, and controversial, TTIP. She noted that such an agreement could focus only on "*tariffs on goods and some other low hanging fruits*", but would still require a lengthy scoping process and unanimous approval of the EU Member States.

Considering the ongoing trade negotiations and the negotiations in the '*pipeline*', resolving outstanding procedural matters is of great importance for the EU, as well as for the EU's trading partners. Trade and investment negotiations provide unique opportunities to facilitate trade and improve investment conditions for businesses around the world. In such bilateral negotiating settings, it is much easier than at the multilateral level to address specific issues affecting trade between parties, such as services trade or geographical indications, anti-competitive practices and/or specific market access issues for trade in goods. Businesses within the EU and around the world stand to benefit from these agreements, in particular small- and medium-sized enterprises that cannot afford the high costs associated with overcoming non-tariff measures (NTMs) or non-tariff barriers (NTBs). This requires negotiators that are aware of such issues and traders able to timely and accurately convey their grievances or commercial objectives in certain markets, underlining the need for involvement and engagement. Businesses with commercial interests in the EU or its trading partners should carefully analyse the relevant rules and issues being negotiated and should examine how and when they could be addressed in ongoing and future trade talks.

As EU-UK negotiations continue to progress slowly or not all, the UK debates the impact of '*Brexit*' on the food and drink sector

On 22 April 2018, the United Kingdom's House of Commons' Business, Energy and Industrial Strategy (hereinafter, UK BEIS) Committee published its report on '*The impact of Brexit on the processed food and drink sector*'. The report emphasises the urgency for the UK to secure free trade agreements with trading partners, and urges the UK Government to

deliver “*certainty and clarity*” to enable the food and drink sector to adapt to the terms of a future post-‘*Brexit*’ relationship with the EU. Shortly thereafter, on 10 May 2018, the United Kingdom’s House of Lords’ EU Energy and Environment Sub-Committee published a report on ‘*Brexit: food prices and availability*’, raising concerns on increasing food costs and disrupted supply by potential post-‘*Brexit*’ trade barriers. While the UK continues to debate and work on establishing its future policies and regulatory framework after ‘*Brexit*’, negotiations with the EU are progressing slowly and the next deadline to present substantive advancements is looming at the end of June, when the next summit of EU leaders will take place.

On 29 March 2017, the UK Government officially notified the EU of its intention to withdraw from the EU. Article 50 of the Treaty on the Functioning of the EU (TFEU) provides for a two-year period to negotiate the exit and, in its ‘*Brexit*’ bill, the UK formally committed to leave the EU at 23:00 GMT on 29 March 2019. On 15 December 2017, the EU and the UK agreed that sufficient progress had been made in the first phase of ‘*Brexit*’ negotiations and agreed that negotiations would move to the second phase, meaning that negotiations regarding the future relationship of the EU and the UK could begin. On 23 March 2018, the European Council confirmed the agreement on the transition period following the UK’s exit from the EU on 29 March 2019, which would last until 31 December 2020. The agreement on the transition period, and the rules contained therein, provide important clarifications for trading partners around the world and are a first step in reducing the vast amount of uncertainties surrounding ‘*Brexit*’. At the same time, the UK already started preparations for its post-‘*Brexit*’ trade agreements with important trading partners, such as Australia and the US (see *Trade Perspectives, Issue No. 7 of 6 April 2018*). Almost two months later, however, on 15 May 2018, the EU’s Chief ‘*Brexit*’ negotiator Michel Barnier stated that, since March, “*no significant progress*” had been made in the ‘*Brexit*’ negotiations.

On 22 April 2018, the UK BEIS Committee published its report on ‘*The impact of Brexit on the processed food and drink sector*’ (hereinafter, food and drink report). The food and drink report aims at informing public and parliamentary debate, as well as to influence the UK Government’s objectives in phase 2 of the ‘*Brexit*’ negotiations. The food and drink report addresses a variety of topics, namely: 1) The impact of tariff-barriers; 2) Non-tariff barriers (hereinafter, NTB), 3) Transitional arrangements; 4) Regulatory alignment; 5) Trade opportunities post-‘*Brexit*’; 6) Skills; and 7) Research and Development. The food and drink report then provides a number of important recommendations for the ongoing and future negotiations.

First of all, the report highlights that the UK heavily depends on the EU as an export destination. Approximately 60% of UK food and drink exports are currently destined for the EU market. In the event of a ‘*no deal*’ scenario, meaning that the EU and the UK fail to reach agreement on their future trade relationship, trade relations between the UK and the EU would be governed by WTO rules and the applicable Most Favoured Nation tariffs. The food and drink report states that a ‘*no deal*’ scenario with WTO tariffs would significantly impact the sector’s performance and the competitiveness of exports, particularly for some of the UK’s most important processed food exporters (e.g., companies producing and exporting chocolate, cheese, beef, pork and soft drinks). At the same time, such scenario would also have important repercussions for importers of UK products based within the remaining EU Member States. Another key point to consider is the inevitable increase of NTBs that would affect trade between the EU and the UK, such as border checks and additional administrative costs, in case no agreement is reached on such issues. The report notes that, if a solution ensuring as frictionless trade as possible is not agreed in time for application after the transition, even a few additional non-tariff barriers could prove very challenging at the UK’s border crossing points and have a serious impact on small and medium suppliers, especially between Ireland and Northern Ireland. This would also affect the type and price of products available to consumers. Additionally, and unsurprisingly considering the importance of the EU market, the food and drink report recognises that, after leaving the EU, the UK food and drink sector regulation should remain tied as closely as possible to the relevant EU regulatory framework, which would provide important trade facilitation for UK exports to the

EU market (and *vice-versa*). Moreover, the report underlines that “[k]ey EU regulations like geographical indicators must be preserved to maintain the competitiveness of flagship UK products and to allow UK consumers confidence in what they buy”. It appears that, for reasons of trade facilitation, the UK will likely have to maintain a large part of the EU regulatory ‘*acquis*’ (i.e., the body of EU law) in order to avoid detrimental post-‘*Brexit*’ consequences for UK businesses.

The food and drink report concludes that “*Brexit will bring considerable challenges and change to the UK processed food and drink sector after decades of building supply chains across Europe and enjoying tariff-free trade and free movement of goods to the EU*”. Therefore, the report recommends to the UK Government the following actions: 1) Prioritise a free trade agreement (hereinafter, FTA) with the EU to protect the UK’s processed food and drink sectors’ competitiveness; 2) Carefully balance the impact that non-EU imports could have on the competitiveness of UK businesses and the cost of timely deliveries with the merits of continuing to rely primarily on EU imports; 3) Stay as close as possible to EU law; 3) Provide clarity and certainty regarding future customs arrangements at the border, especially between Ireland and Northern Ireland; and 4) Secure mutual recognition of regulatory standards to provide certainty to businesses. The food and drink report also notes that the agreed 21-month transition period, from 29 March 2019 to 31 December 2020, is a very short time for the sector and could prove challenging for businesses. Still, the report recognises ‘*Brexit*’ as “*a unique opportunity to diversify the UK’s balance of trade towards new partnerships with non-EU countries*” and to reduce costs for businesses by agreeing on the mutually-binding reduction or removal of tariffs on certain goods with trading partners. Therefore, the report urges the UK Government to “*also prioritise the roll-over of existing EU trade agreements to the UK and then focus on establishing new free trade agreements with third countries*”.

On 10 May 2018, the UK’s House of Lords’ EU Energy and Environment Sub-Committee released a report on “*Brexit: food prices and availability*”. The report provides a detailed analysis of the potential impacts of ‘*Brexit*’ on the price and availability of food for UK consumers. The report recalls that 30% of food consumed in the UK currently originates from the EU, with an additional 11% originating from non-EU third countries on the basis of EU FTAs with those countries. The Energy and Environment Sub-Committee counted 40 such agreements, applying to imports from a total of 56 different countries. Similar to the food and drink report from the UK’s BEIS Committee, the UK’s House of Lords’ EU Energy and Environment Sub-Committee points out that, if an agreement were not to be reached by the time the UK leaves the EU, the increase in applicable tariffs could lead to significant price rises for UK consumers. Moreover, additional customs workload could severely block the UK’s ports and airports and significantly disrupt food deliveries.

Another concern highlighted in the food prices and availability report refers to food security. The report points out that food inequality in the UK could increase as a consequence of ‘*Brexit*’. This could intensify existing differences in food consumption between those that are financially able to purchase high-quality local produce and those who cannot afford that option and are required to base their diet on cheaper imported food. In its conclusion, the Committee calls on the UK Government to reach agreement with relevant third countries and that existing FTAs concluded by the EU should continue to apply during the transition period. As a second step, the UK should then determine which agreements should continue to apply after December 2020, or already after 29 March 2019 in case no agreement is reached, and which should be renegotiated. Finally, the report points out that the UK Government should publish a “*comprehensive food strategy for the UK that sets a clear policy direction for ensuring the UK’s food security*” after the UK leaves the EU.

Various sectors in the food industry have expressed their positions regarding the post-‘*Brexit*’ UK food policy. Although a number of industries count on new opportunities to expand trade, the UK’s food and drink sector as a whole requested the UK Government to provide more clarity and certainty on the future food policy. While the UK’s National Pig Association sees potential benefits by expanding exports to third countries, such as China, after ‘*Brexit*’, it

remains concerned regarding the potential disadvantages of the future trade agreement between the EU and the UK. The British Poultry Council stated that more government support was needed and that it was essential for the UK poultry sector to continue having preferential access to the EU Single Market. Similarly, the British Eggs Industry Council pointed out that more certainty from the Government was needed in order to invest in the sector. Not only the UK food industry is poised to be significantly affected by 'Brexit', this also extends to other EU Member States and to Ireland in particular. For instance, the dairy industry in Ireland already noted its concerns regarding the uncertainty of the future trade relations with the UK and, specifically, the border with Northern Ireland. Currently, 65% of Ireland's cheddar cheese exports go to the UK, along with large shipments of butter and infant formula. In total, 30% of Ireland's dairy production is exported to the UK.

The next milestone for the 'Brexit' negotiations will be the EU leaders' summit on 28-29 June 2018. However, as noted above, the EU's Chief 'Brexit' negotiator Michel Barnier recently stated that "no significant progress" had been made in the 'Brexit' negotiations since March. This means that the 'Brexit' negotiating schedule is tightening and that the existing legal and practical uncertainties remain plentiful. The coming months will be decisive for EU-UK trade in the years to come. All interested stakeholders should, therefore, continue to prepare for the various possible 'Brexit' scenarios and engage with their respective interlocutors in the EU and the UK.

The UK might reconsider its approach to the labelling of alcoholic drinks – When may a beverage be labelled as 'alcohol-free' in Europe?

The UK's definition of an 'alcohol-free' drink could change soon, with the UK Government currently conducting a public consultation on new regulations for the labelling of 'low alcohol' drinks labelling. Descriptors for 'alcohol-free' and low alcohol drinks are currently not harmonised at the EU level. As general EU food information rules do not define 'alcohol-free' drinks, the current legal situation in the UK and other EU Member States (*i.e.*, Belgium, Germany and Spain) diverges due to a lack of harmonisation. Discussions and developments at the international level related to 'alcohol-free' and similar claims appear to contribute to this ongoing debate.

EU law does not define what 'alcohol-free' drinks are. *Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers* (hereinafter, FIR). 9(1)(k) of the FIR merely provides that, with respect to beverages containing more than 1,2 % by volume of alcohol (hereinafter, ABV), the labelling of the product with the actual alcoholic strength by volume is mandatory. Additionally, Article 16(4) of the FIR establishes that a list of ingredients or a mandatory nutrition declaration are not mandatory for beverages containing more than 1,2 % ABV (see *Trade Perspectives*, [Issue No. 6 of 24 March 2017](#) and [Issue No. 6 of 23 March 2018](#)). In relation to 'alcohol-free' labelled drinks, the most important provision of the FIR is the general Article 7(1)(a), which provides that food information must not be misleading, particularly as to the characteristics of the food and, for example, as to its nature, identity, properties, and composition.

The UK's *Food Labelling Regulations (FLR) of 1996* set out rules on how 'low alcohol' drinks (those of 1.2% ABV or less) may be described. These rules on the use of low alcohol descriptors aim at protecting the public and informing consumers. The regulations are due to expire on 13 December 2018, when they will be repealed by the *UK Food Information Regulations 2014*. Until then, Regulation 42 and Schedule 8 of the *Food Labelling Regulations 1996* are still in force for uses of the terms 'alcohol-free', 'dealcoholised', 'low alcohol' and 'non-alcoholic'. Regulation 42 provides that the ('misleading') words and descriptions specified in Schedule 8 must not be used in the labelling or advertising of a food, except in accordance with the appropriate conditions set out in that Schedule. It lists four 'low alcohol' descriptors: 1) The description 'alcohol-free' must not be applied to any

alcoholic drink from which the alcohol has been extracted, unless the drink has an ABV of not more than 0.05%; 2) The description '*dealcoholised*' must not be applied to any drink, unless the drink, being an alcoholic drink from which the alcohol has been extracted, has an ABV of not more than 0.5%; 3) The description '*low alcohol*', or any other word or description, which implies that the drink being described is low in alcohol, must not be applied to any alcoholic drink unless the drink has an ABV of not more than 1.2%; and 4) The description '*non-alcoholic*' must not be used in conjunction with a name commonly associated with an alcoholic drink, except in the composite name '*non-alcoholic wine*' when that composite name refers to communion or sacramental wine.

The UK's Regulations contain a mutual recognition clause, which provides that the rules do not apply to food imported from an EEA State in which it was lawfully produced and sold, to food imported from an EU Member State in which it was lawfully sold, or to food produced outside the EU which is imported from an EU Member State, and that, in all such cases, is suitably labelled.

With its public consultation, which closed on 10 May 2018, the UK Government is assessing on how best to continue to communicate information to the public about '*low alcohol*' drinks, so that consumers can make informed choices when they purchase drinks, including alcohol. The sale of '*low alcohol*' drinks, as an option for consumers, intends to encourage responsible drinking. The UK Government also intends to use this consultation to receive views on whether it should introduce new descriptors for alcoholic drinks above 1.2% ABV to help consumers make an informed choice and to promote '*low alcohol*' drinks. The UK Government believes that any future '*low alcohol*' descriptors could be introduced through guidance rather than legislation.

In the UK, an '*alcohol-free*' drink must have an alcohol graduation of 0.05% ABV or below. In other EU Member States, however, the term '*alcohol-free*' may be used with products with higher alcoholic graduation. Such provisions are often set out in rules addressing specific alcoholic drinks like beer and wine. In Belgium, the Royal Decree on beer of 1 March 1993 (*i.e.*, the *Arrêté royal concernant la bière*) provides in § 2 that the words '*slightly alcoholic*' (*légèrement alcoolisée* in French) or '*low in alcohol*' (*pauvre en alcool* in French) may be used as part of the sales denomination when the drinks have an alcohol content of more than 0.5% ABV and maximum 1.2% ABV. § 3 provides that the indication '*alcohol-free*' (*sans alcool* in French) may be used as part of the sales denomination when the drinks have a maximum alcohol content of 0.5% ABV. In Spain, the Royal Decree 678/2016 of 16 December 2016 approving the quality standard for beer and malt drinks (*i.e.*, *Real Decreto 678/2016 por el que se aprueba la norma de calidad de la cerveza y de las bebidas de malta*) provides that beer, whose ABV is between 1% and 3%, may be denominated '*beer with low alcohol content*' (*Cerveza de bajo contenido en alcohol* in Spanish), while beer with an ABV of less than 1 % may be denominated '*alcohol free*' beer (*cerveza sin alcohol* in Spanish). In Germany, there is no such statutory limit and, in fact, 70% of consumers assume that '*alcohol-free*' beer contains no alcohol at all, as shown by research conducted in the context of the project on Food Clarity (*i.e.*, *Lebensmittelklarheit*) of the German federal consumer association (*i.e.*, the *Verbraucherzentrale Bundesverband* and, hereinafter, *vzbv*). In June 2014, the *vzbv* and the German Brewers Association (*Deutscher Brauer-Bund*, *DBB*) agreed that breweries belonging to the *DBB* would voluntarily indicate the residual alcohol content in '*alcohol-free*' beer. The decision of the *DBB* breweries was the result of a several-month dialogue between the *vzbv* and the *DBB*. '*Alcohol-free*' beer may contain up to 0.5% ABV. This value has been established in § 47 of the German Wine Regulation (*Weinverordnung*) for wine and is now also applied to non-alcoholic beer as a generally prevailing public understanding (*allgemeine Verkehrsauffassung*).

At the international level, the Codex Committee on Food Labelling, in its 44th Session in Asunción, Paraguay, from 16 to 20 October 2017, addressed a Discussion Paper on Alcoholic Beverage Labelling. Although there does not appear much progress in this field, it must be noted that the FAO/WHO Coordinating Committee for Asia is also discussing the topic of '*Standardization for Alcoholic Beverages in Codex*'. Under the section on the

'Proposed way forward', the summary document of the 20th Session in New Delhi, India from 26 to 30 September 2016, reads that *"To take into account the above the Commission could develop specific labelling provisions to be included in the future Codex standards on alcoholic beverages to reduce harmful use of alcohol and its impact on health of individuals and populations. This could best be done in a horizontal approach. In particular, new work can be undertaken by the Codex Committee on Food Labelling with regards to alcoholic beverages, addressing a claim for 'alcohol-free' product, labelling for alcoholic content and energy value, a generic public health warning, restrictions on nutrition and health claims, and possibly advertising (as relevant). These provisions would apply to all alcoholic beverages whether they have been standardized by Codex or not"*.

Some drinks producers are calling for the UK's definition of 'alcohol-free' to be raised from 0.05% to 0.5% ABV in order to remove confusion for consumers and to provide UK producers with a fair and level playing field since some EU imports at 0.5% ABV (from, for example, Belgium or Germany) or even at 1% ABV (from, for example, Spain) may be labelled as 'alcohol-free', while those currently produced in the UK may not and must instead use the terms 'low alcohol' or 'de-alcoholised'. It should be noted that some German breweries produce 'alcohol-free' beer for the UK market with 0.05% ABV without resorting to the mutual recognition clause in UK law. However, UK consumer advocates intend to retain the distinction for drinks that are 0.05% ABV or under, saying that calling and labelling a drink with 0.5% alcohol 'alcohol-free' was *"like giving a vegetarian a salad with some thinly cut ham"*.

The UK consultation document states that the popularity and sales of low and non-alcoholic drinks was on the rise with a 20.5% increase in sales over the past 12 months. Low alcoholic products may have fewer calories than regular strength alcohol drinks and could help reduce calorie intake as part of a healthy diet. The switch to lower and non-alcoholic beverages may have a positive effect in helping to achieve public health gains by reducing UK alcohol consumption and in helping to support people to move towards drinking less than 14 units a week, as outlined in the UK Chief Medicals Officers' Low Risk Drinking guidelines published in 2016.

The UK maintains, so far, a different position and legislation vis-à-vis 'alcohol-free' drinks. Perhaps it will now 'harmonise' its approach towards that of major beer exporting EU Member States, such as Belgium and Germany. In that context, the outcome of the UK consultation on 'low alcohol' drinks and, possibly, new definitions for 'alcohol-free' and 'low alcohol' drinks, are of particular interest, also in view of 'Brexit' (see, for example, the discussion above and in previous issues of *Trade Perspectives*, [Issue No. 4 of 23 February 2018](#)), which will likely lead to less harmonisation between the EU and the UK. The international level within the *Codex Alimentarius* Commission may be a *forum* where further harmonisation measures could be introduced or discussed, in particular in view of promoting reasonable consumption of alcoholic drinks and public health objectives. Stakeholders in the alcoholic beverages sector are advised to carefully monitor developments and take action to ensure that their legitimate interests are voiced and represented within all relevant *fora*.

Recently Adopted EU Legislation

Market Access

- *Commission Implementing Regulation (EU) 2018/700 of 8 May 2018 amending the lists of third country establishments from which imports of specified products of animal origin are permitted, regarding certain establishments from Brazil*

Customs Law

- *Commission Implementing Regulation (EU) 2018/724 of 16 May 2018 on certain commercial policy measures concerning certain products originating in the United States of America*
- *Commission Implementing Regulation (EU) 2018/720 of 16 May 2018 opening and providing for the management of a Union tariff quota for poultry originating in Iceland*

Food and Agricultural Law

- *Commission Delegated Regulation (EU) 2018/707 of 28 February 2018 amending Delegated Regulation (EU) No 639/2014 as regards the eligibility criteria for support for hemp under the basic payment scheme and certain requirements in respect of voluntary coupled support*
- *Commission Implementing Regulation (EU) 2018/709 of 14 May 2018 amending Implementing Regulation (EU) No 809/2014 as regards the labels requirement pertaining to the aid applications concerning the areas used for the production of hemp*

Trade Remedies

- *Commission Regulation (EU) 2018/683 of 4 May 2018 imposing a provisional anti-dumping duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China, and amending Implementing Regulation (EU) 2018/163*

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