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The Council of the EU finally adopted the negotiating directives for the free trade agreements with Australia and New Zealand

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. The Commission had proposed said directives already back in September 2017 and a certain degree of impatience was growing in Australia and New Zealand to finally begin formal negotiations. Businesses in the EU and in these two partner countries consider the opening of trade negotiations as an important opportunity to further eliminate tariffs and non-tariff barriers (hereinafter, NTB).

Currently, trade and economic relations between the EU and Australia are regulated by the ‘2008 EU-Australian Partnership Framework’ and with New Zealand by the 2017 ‘Partnership Agreement on Relations and Cooperation’. In the 2015 EU trade and investment strategy document ‘Trade for all’, the EU noted that the Asia-Pacific region is crucial to European economic interests and that it would “request authorisation to negotiate FTAs with Australia and New Zealand, taking into account EU agricultural sensitivities”. The EU further stated that those free trade agreements (hereinafter, FTAs) would provide a solid platform for deeper integration with Asia-Pacific value chains (see *Trade Perspectives*, [Issue No. 20 of 3 November 2017](#)). On 13 September 2017, the Commission presented the draft negotiating directives in its two recommendations for Council Decisions authorising the opening of negotiations for free trade agreements with [Australia](#) and [New Zealand](#). On 26 October 2017, the European Parliament’s plenary adopted a resolution containing the Parliament’s recommendations to the Council on the proposed negotiating mandate for trade negotiations with Australia.

On 22 May 2018, the Council adopted the negotiating directives, which authorise the Commission to begin formal trade negotiations with Australia and New Zealand. However, despite recent efforts to increase transparency and the Commission’s immediate publication of the proposed negotiating mandates, the Council has not yet publicly released the adopted negotiating directives. The Council stated that the agreements with Australia and New Zealand aimed at further reducing NTBs, removing custom duties on goods, and providing better market access for services and public procurement in Australia and New Zealand. The sectors likely to benefit from the trade agreements are machinery, chemicals, processed foods, as well as services. At the same time, the Council stated that the mandates aim at protecting “vulnerable sectors such as agriculture by maximising the benefits of market

opening without harming local producers. The mandates do not envisage full liberalisation of trade in agricultural products, which are foreseen as benefiting from specific treatment". The mandates also provide the typical comprehensive framework for negotiations, which includes ensuring the highest standards in the areas of labour, safety, environment, climate and consumer protection. The Commission noted that the agreements would provide EU businesses with a "*valuable entry point into the wider Asia-Pacific region*". Australia and New Zealand are both parties to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (hereinafter, CPTPP) and the future EU-Australia FTA and EU-New Zealand FTA should allow EU businesses to compete on equal footing with the CPTPP parties or other countries that already have better market access to Australia and New Zealand through other preferential trade agreements. The EU already concluded several trade agreements with other CPTPP parties (*i.e.*, Canada, Japan, Singapore and Viet Nam), negotiations with Mexico are largely completed, and negotiations with Chile are ongoing.

The EU is Australia's third largest trading partner and the EU exports mainly manufactured goods to Australia, while Australia exports mainly mineral commodities and agricultural products to the EU. Annual bilateral trade amounts to more than EUR 47.7 billion, with a positive trade balance of more than EUR 21 billion for the EU. EU companies supply commercial services worth nearly EUR 20 billion to Australia and hold investments in the country worth more than EUR 160 billion (in 2016). The agri-food sector, instead, looks poised to become one of the key areas of contention during the upcoming negotiations. Australia maintains relatively high tariffs for, in particular, processed agricultural and food products. This includes tariffs for cheese, wine and spirits. For cheese, the '*Cheese and Curd Quota Scheme*' aims at improving the competitiveness of the Australian dairy industry through a combination of quota restrictions and tariff reductions (see *Trade Perspectives, Issue No. 8 of 21 April 2017*). Additionally, strict Australian biosecurity measures impede certain EU exports such as pig meat products. Trade in Australian beef will likely become another sensitive area during the negotiations, as beef is currently subject to strict market access regulations by the EU. Important beef-producing EU Member States, such as Ireland, will likely oppose any significant increase of the quota for beef or reduction of the tariffs. Beef is already one of the key issues of discussion in the long-lasting negotiations between the EU and Mercosur (*i.e.*, Argentina, Brazil, Paraguay, and Uruguay). Furthermore, some EU Member States, such as France, Ireland and Belgium have already requested the Commission to investigate the cumulative effect of the different FTAs on their agricultural sectors.

The EU is Australia's fourth largest export destination for agriculture, fisheries and forestry, and also the largest source of agricultural, fishery and forestry imports. North Australian agricultural industries consider that an agreement with the EU could benefit northern Australian farmers in the beef, sugar, fishery and horticulture industries. The Australian Oilseeds Federation (hereinafter, AOF) and Grain Growers (*i.e.*, Australia's national grains representative body), stated that the EU market was critical for canola producers and continuing access to the EU market would bring certainty to the industry. However, the AOF added that, contrary to other trade agreements, the FTA with the EU was unlikely to create immediate value for growers. This is attributed to the fact that tariffs are already rather low or inexistent and that there was already full access to the EU market. According to the AOF, the main challenge would be the elimination of NTBs, in particular the EU's environmental requirements.

Geographical indications (hereinafter, GIs) could become another sensitive area. In March 2018, John Clarke, the Director for International Relations at the Commission's Directorate-General for Agriculture and Rural Development (*i.e.*, DG AGRI), stated that GIs would "*make or break*" negotiations with Australia. While not referring to specific GIs, Director Clarke mentioned that GIs covered by the agreement would likely include "*some cheese, olive oil, hams, charcuterie*". Australian wine makers are concerned regarding a debate over '*prosecco*', a product that Italy registered as a GI in the EU in 2009 and that is also produced in Australia. Australia's '*prosecco*' production is projected to reach a value of USD 200 million in the coming years.

The EU is New Zealand's second largest trading partner after Australia, with annual bilateral trade amounting to more than EUR 8.7 billion in 2017. New Zealand exports mainly agricultural products to the EU, while the EU exports mainly manufactured and industrial goods to New Zealand. In 2017, trade with New Zealand resulted in a positive balance of EUR 1.9 billion for the EU. EU companies hold more than EUR 10 billion in foreign direct investment in New Zealand. While EU exports cover a broad range of sectors (e.g., motor vehicles, pharmaceuticals), almost 75% of New Zealand's exports to the EU are agricultural products (e.g., lamb, dairy, beef and fruits and vegetables). New Zealand's beef and lamb industry underlined that an agreement with the EU was an opportunity to reduce tariffs and to liberalise the various tariff-rate quotas (hereinafter, TRQs) in these sectors, which could significantly improve New Zealand's market access to the EU. New Zealand's Meat Industry Association MIA stated that New Zealand paid approximately USD 53 million in tariffs per year on its red meat exports to the EU. However, negotiations in these sectors will likely be sensitive and prove difficult, due to the strong influence of relevant trade associations in the EU. On 28 May 2018, during the '*Civil Society Dialogue with EU Trade Commissioner Malmström*', a representative of the European farmers and cooperatives organisations Copa Cogeca already highlighted concerns for any increase of beef imports from New Zealand.

Similar sensitivities apply with respect to the dairy sector in the EU, which is another of New Zealand's priorities in the negotiations. New Zealand's Dairy Companies Association (DCANZ) stated that New Zealand's dairy exports to the EU were highly restricted by market access barriers. For instance, the in-quota tariff on butter is currently EUR 700 per metric tonne. Therefore, in 2017, only 9,000 metric tonnes of the two million metric tonnes of butter consumed in the EU was imported from third countries. New Zealand reportedly considers proposing a shared processing approach, whereby dairy products are produced in New Zealand, exported, and then processed in the EU, and *vice versa*. In any case, it is clear that the dairy sector is one in which significant discussions appear to be necessary before negotiators reach any agreement. Finally, EU businesses are hopeful to make progress on long-standing issues related to trade in kiwifruit. In New Zealand, Zespri Group Limited (hereinafter, Zespri) maintains a monopoly on the marketing of kiwifruit. In particular, New Zealand expressly prohibits any operator other than Zespri from exporting kiwifruit to markets other than Australia, except where authorised by Kiwifruit New Zealand, a dedicated and Government-controlled regulatory board. The operation of Zespri, and the export licensing system applied to kiwifruit in New Zealand, might violate New Zealand's WTO obligations (for a detailed analysis, see *Trade Perspectives*, Issue No. 11 of 3 June 2016) and the issue could now be addressed and resolved during the negotiations. This is particularly relevant noting that New Zealand is the world's third largest producer of kiwifruit, behind China and Italy and, in the EU, France and Greece are also major producers of kiwifruit.

In June, European Commissioner for Trade, Cecilia Malmström, will travel to Australia and New Zealand to meet her Australian and New Zealand counterparts for the "*political beginning*" of the respective trade negotiations. The official first negotiating round is then scheduled to take place in Brussels in July. Stakeholders, businesses and trade associations in Australia, New Zealand and the EU should be prepared to engage and interact with their relevant interlocutors.

The German Federal Court of Justice rules that beer may not be marketed as 'easily digestible' ('*bekömmlich*')

The German Federal Court of Justice (i.e., the *Bundesgerichtshof*, BGH in its German acronym) decided, on 17 May 2018, that the term 'easily digestible' (i.e., '*bekömmlich*' in German) may not be used in a beer advertisement (Case number I ZR 252/16). The article compares the judgment with the preliminary judgment of the Court of Justice of the European Union (hereinafter, the CJEU) of 6 September 2012, in Case C-544/10 *Deutsches Weintor eG v Land Rheinland-Pfalz*, where it established that wine may not be promoted and labelled

as being '*easily digestible*', accompanied by a reference to the reduced content of substances frequently perceived by consumers as being harmful.

The claim '*bekömmlich*' on beer could be considered a '*health claim*' under *Regulation (EC) No 1924/2006 on nutrition and health claims*. Article 2(2)5 of *Regulation (EC) No 1924/2006* defines '*health claim*' as "*any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health*". Article 4 of *Regulation No. 1924/2006*, entitled '*Conditions for the use of nutrition and health claims*', provides in paragraph 3 that "*Beverages containing more than 1.2% by volume of alcohol shall not bear health claims*".

In the case before the German Federal Court of Justice, the defendant *Gottfried Härle* operates a brewery in the southern German *Allgäu* region. Since the 1930s, the brewery has been using the slogan '*To your health!*' ('*Wohl bekomms!*') for its beers, a regional colloquial language term for '*Cheers!*'. On its website, the brewery advertised certain beer brands, which have an alcohol content of 5.1%, 2.9% and 4.4% by volume of alcohol (hereinafter, ABV), using the term '*easily digestible*' ('*bekömmlich*' in German). The plaintiff, the consumer protection *Association of Social-Minded Competition* (*Verband Sozialer Wettbewerb*, VSW in its German acronym), considers the claim '*easily digestible*' ('*bekömmlich*' in German) to be an inadmissible health claim within the meaning of *Regulation (EC) No 1924/2006*. VSW had obtained in 2015 an injunction against the brewery prohibiting the brewery to use the term for advertising, a decision that was upheld by previous instances. The appeal of *Gottfried Härle*, in the last instance, has now been declared unsuccessful before the BGH.

In particular, the BGH ruled that, under Article 4(3) of *Regulation (EC) No 1924/2006*, in the case of alcoholic beverages containing more than 1.2% by volume, health claims are not only prohibited in the labelling of products, but also with respect to the advertising of beverages. The Court held that, when the claim promises an improvement in the state of health due to the consumption of a food (or beverage, as in this case, which is considered food), it is a health claim. An indication is also relevant to health when it states that the consumption of the food does not have adverse effects on human health, which in other cases may be linked to the consumption of such a food. According to the BGH, the term '*bekömmlich*' is understood by the relevant public as '*wholesome*', '*beneficial*' and '*easily digestible*'. When using it for food, it expresses the idea that the food is well absorbed in the digestive system and is well tolerated – supposedly even in case of long-term consumption. This concept is also understood in the context of the advertising in question. The Court, most importantly, held that it cannot be deduced from the advertisement that the term '*bekömmlich*' only intends to describe the taste of the beer.

The judgment of the German BGH on '*easily digestible*' beer comes almost six years after the preliminary judgment of 6 September 2012, in the Case C-544/10 *Deutsches Weintor eG v Land Rheinland-Pfalz*, where the Court of Justice of the European Union (hereinafter, the CJEU) established that wine may not be promoted and labelled as being '*easily digestible*' (see *Trade Perspectives*, [Issue No. 17 of 21 September 2012](#)). *Deutsches Weintor*, a wine-growers' cooperative, marketed wine described as '*mild edition*', accompanied with a reference to its '*gentle acidity*'. More precisely, the label stated that: "*It owes its mildness to the application of our special 'LO3' protective process for the biological reduction of acidity*". The labels on the bottle necks bear the inscription: '*mild edition, easily digestible*'. The authority responsible for supervising the marketing of alcoholic beverages in the German State of *Rhineland-Palatinate* objected to the use of the description '*easily digestible*' on the ground that it was a health claim that is prohibited on alcoholic beverages by *Regulation (EC) No 1924/2006*. In its preliminary judgment, the CJEU established that the prohibition against using health claims to promote beverages containing more than 1.2% ABV covers the description '*easily digestible*', accompanied by a reference to the reduced content of substances frequently perceived by consumers as being harmful. According to the CJEU, the concept of a '*health claim*' does not necessarily presuppose the suggestion of an improvement in health as a result of the consumption of the food in question, but also any relationship that implies the absence or reduction of effects that are adverse or harmful to

health and which would otherwise accompany or follow such consumption. In its judgment, the CJEU clarified that it was sufficient that the mere preservation of a good state of health, despite the potentially harmful consumption, be suggested. Furthermore, the CJEU held that it was not only the temporary effect of consumption in a specific instance that must be taken into account, but also the cumulative effects of the regular consumption of the food on physical condition. In simple terms, the concept of '*health claims*', under *Regulation (EC) No 1924/2006*, does not necessarily mean that health shall be improved by consuming a food; it is sufficient that health does decline. The CJEU's broad interpretation of the concept of '*health claims*' is not only relevant for alcoholic beverages, but also for foodstuffs in general. The question is whether, in cases where the mere preservation of a good state of health is the claimed effect, claims that refer to a general and temporary '*well being*' also fall under the concept of '*health claim*'.

The German BGH appears to have followed the CJEU, but its interpretation of health claim may be even broader. The CJEU ruled that the words '*health claim*' cover a description such as '*easily digestible*' that is accompanied by a reference to the reduced content of substances frequently perceived by consumers as being harmful. Paragraph 31 of the CJEU's decision in the case of '*Deutsches Weintor*' states that "*in the present case, the claim at issue suggests that, in view of the reduced acidity, the wine in question is particularly easy or pleasant to digest. Accordingly, the wine is said to produce a beneficial nutritional or physiological effect*". With the indication "*in view of the reduced acidity*", the CJEU refers to the claim '*gentle acid*', which, in the CJEU's opinion, suggests that the wine in question is particularly easy or pleasant to digest. From the CJEU's decision, it is arguably not apparent that the term '*easily digestible*' as such is a health-related claim. Possibly, the CJEU reached this conclusion only because the term '*easily digestible*' was accompanied by a reference to the reduced content of substances frequently perceived by consumers as being harmful (namely, the reference to reduced acidity). It can, therefore, be argued that the CJEU did not clarify whether the term '*easily digestible*' as such is a health claim. Rather, it appears that the term '*easily digestible*' was classified as a health claim if accompanied by a certain reference (in the case at hand, '*gentle acid*').

The BGH now ruled that the use of the term '*easily digestible*' for beer establishes a link between the beverage and consumers' health. This is a health claim in the sense of *Regulation (EC) No 1924/2006*. Crucial is what the average consumer imagines when reading the word '*digestible*' in an advertisement for beer. The BGH referred to the Higher Regional Court of Stuttgart, which assumed in the first instance that a consumer typically equates '*bekömmlich*' with '*wholesome*', '*healthy*' and '*easily digestible*'. The BGH states that this applies regardless of whether the characteristic '*easily digestible*' ('*bekömmlich*') is isolated or advertised in connection with certain other properties of the beer. The fact that the brewery had been advertising the product for many years with the slogan '*To your health!*', was irrelevant. The BGH held that this was merely a wish (in the sense of a toast), whereas the indication '*easily digestible*' in a beer advertisement was an actual promise.

The decision of the BGH appears to have implemented and further developed the CJEU's 2012 ruling in the case of '*Deutsches Weintor*'. The full text of the decision has not yet been published on the websites of the BGH, but it emerges that the use of an isolated '*digestible*' ('*bekömmlich*') claim appears sufficient to be considered as a prohibited health claim. For the affected brewery, but also for others, the BGH's decision will be difficult to digest. All breweries that are advertising their beers with terms like the German '*bekömmlich*' ('*easily digestible*') should now consider changes in their advertising. Labels, websites, and other marketing must be revised and adapted to the new case law. If not, there is a clear threat of actions by enforcement authorities, competitors or consumer associations.

The World Health Organization calls on governments to eliminate industrially produced trans-fatty acids from the global food supply by 2023

On 14 May 2018, in order to eliminate industrially-produced trans fats or, more correctly, trans-fatty acids (hereinafter, TFAs) from the global food supply by 2023, the World Health Organization (hereinafter, WHO) released a 6-step plan with the acronym '*REPLACE*', which stands for: 1) REviewing dietary sources of industrially produced TFAs; 2) Promoting the replacement of industrially produced TFAs with healthier alternatives; 3) Legislating or enacting regulatory actions to ban industrially produced TFAs; 4) Assessing the TFA content in food and the population's consumption; 5) Creating awareness of the negative health effects of TFAs; and 6) Enforcing policies and regulation. This article reviews, in particular, legislative measures that different countries have put in place in order to tackle the issue of industrially produced trans-fatty acids and also discusses available replacements.

TFAs are specific types of unsaturated fatty acids and are naturally present in food products derived from ruminant animals, such as dairy products or meat from cattle, sheep or goat, as well as in some plants and products of vegetable origin (*i.e.*, leeks, peas, lettuces and rapeseed oil). Most importantly, TFAs are also present in fats that have been industrially processed to artificially solidify them through hydrogenation (*i.e.*, to treat with hydrogen). Industrially produced TFAs can only be obtained through the process of partial hydrogenation. Partial hydrogenation of vegetable oils has an impact on the physiochemical and functional properties of the unsaturated fatty acids, thereby leading to a high content of TFAs (depending on the type of fat and method). Conversely, the process of complete hydrogenation (which is more costly), does not lead to TFAs. The majority of TFAs can be found in processed food products, such as ready meals, biscuits, potato chips, ready-made sauces or margarines, but also in take-away food. The letters '*RE*' of the WHO's '*REPLACE*' plan underline the need to continue REviewing dietary sources of industrially produced TFAs.

The WHO estimates that, every year, TFA intake leads to more than 500,000 deaths from cardiovascular disease and recommends that the total TFA intake be limited to less than 1% of the total energy intake, which translates to less than 2.2 g/day with a 2,000-calorie diet. TFAs increase levels of LDL-cholesterol, a well-accepted biomarker for cardiovascular disease risk, and decrease levels of HDL-cholesterol, which carry away cholesterol from arteries and transport it to the liver, which secretes it into the bile. Diets high in TFAs increase heart disease risk by 21% and deaths by 28%. Replacing TFAs with unsaturated fatty acids decreases the risk of heart disease, in part, by ameliorating the negative effects of TFAs on blood lipids. In addition, there are indications that TFAs may increase inflammation and endothelial dysfunction. The letter '*A*' of the WHO '*REPLACE*' plan underlines the need to continue Assessing the TFA content in food and the population's consumption patterns.

Letter '*C*' of the plan calls for Creating awareness of the negative health effects of TFAs and appears essential for the success of the plan. The WHO Director-General, Dr. *Tedros Adhanom Ghebreyesus*, stated that the "*WHO calls on governments to use the REPLACE action package to eliminate industrially-produced trans-fatty acids from the food supply*". He went on to say that "*implementing the six strategic actions in the REPLACE package will help achieve the elimination of trans fat and represent a major victory in the global fight against cardiovascular disease*". Indeed, the elimination of industrially-produced TFAs from the global food supply has been identified as one of the priority targets of the WHO's strategic plan, the draft 13th General Programme of Work (hereinafter, GPW13), which will guide the work of the WHO in the period from 2019 to 2023. The GPW13 was on the agenda of the 71st World Health Assembly (hereinafter, WHA) that was held in Geneva from 21 to 26 May 2018. As part of the United Nation's Sustainable Development Goals (hereinafter, SDGs), UN Member States have committed to reducing premature deaths from noncommunicable diseases by one-third by 2030. Global elimination of industrially-produced TFAs can contribute to achieve this goal. The WHO notes that several high-income countries have already virtually eliminated industrially-produced TFAs through legally imposed limits on the

amount that can be contained in packaged food. Some governments have implemented nationwide bans on partially hydrogenated oils, the main source of industrially-produced TFAs. In Denmark, the first country to mandate restrictions on industrially-produced TFAs in 2004, the TFA content of food products declined dramatically and cardiovascular disease deaths have declined more quickly than in comparable countries.

Regarding letter 'L' of the WHO's '*REPLACE*' plan on Legislating or enacting regulatory actions to ban industrially produced TFAs, a number of countries have in fact already taken action and introduced a variety of measures. Most notably, in the US, the Food and Drug Administration (FDA) determined, in 2015, that partially hydrogenated oils, the primary dietary source of industrially produced TFAs in processed foods, could no longer be considered as '*generally recognised as safe*' (i.e., GRAS) and have, therefore, been prohibited since June 2018. A number of EU Member States have also introduced or announced legislation limiting the TFA content in food products, including Denmark (2003), Austria (2009), Hungary (2013) and Latvia (2015). Voluntary measures aimed at reducing the TFA content of food exist in Belgium, Germany, Greece, the Netherlands, Poland, and the UK. National dietary recommendations on TFAs were issued in Bulgaria, Finland, Malta, Slovakia, and the UK. Finland, Greece and Spain introduced other legislative measures, such as limits on TFA content for specific products only. Outside the EU, a large number of countries has also introduced legislation limiting the TFA content. At the EU level, on 26 October 2016, the European Parliament adopted a resolution calling for a limit on industrially produced TFAs in foods in the EU (see *Trade Perspectives*, [Issue No. 20 of 4 November 2016](#)).

Thus, a multitude of approaches is possible with respect to regulating TFAs in foods. In fact, in 2015, four options were raised and evaluated by the European Consumer Organisation (BEUC) in an open letter to the Commission (see *Trade Perspectives*, [Issue No. 10 of 15 May 2015](#)). Those options were assessed by a *Report from the Commission to the European Parliament and the Council regarding TFAs in foods and in the overall diet of the Union population* (hereinafter, the Report), published on 3 December 2015. This Report was mandated by Article 30(7) of *Regulation (EU) No. 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers* (hereinafter, FIR), stating that the Commission submit a report on "*the presence of trans fats in foods and in the overall diet of the Union population. The aim of the report shall be to assess the impact of appropriate means that could enable consumers to make healthier food and overall dietary choices or that could promote the provision of healthier food options to consumers, including, among others, the provision of information on trans fats to consumers or restrictions on their use. The Commission shall accompany this report with a legislative proposal, if appropriate*".

Currently, EU legislation, in its rules on nutrition labelling laid down in the FIR, puts an emphasis on saturated fatty acids. Article 30 of the FIR, which establishes the mandatory content of the nutrition labelling declaration, requires that nutrition labelling declarations include: 1) Energy value; and 2) The amounts of fat, saturates, carbohydrate, sugars, protein and salt. No indication of TFAs is currently required. Also, EU legislation does not require a specific reference to TFAs in the list of ingredients, neither does it regulate the content of TFAs in foodstuffs. However, the FIR requires, in No. 8 of Part A of Annex VII, that the expression '*fully hydrogenated*' or '*partly hydrogenated*', accompany the indication of hydrogenated fats and oils in the lists of ingredients. Therefore, knowledgeable consumers can already identify whether a product contains TFAs. Furthermore, Annex 1 of *Regulation (EC) No. 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods* (NHCR) provides claims for products that have a '*Low-saturated fat*' content and for those that are '*Saturated fat-free*', if the respective requirements (i.e., the amount of saturated fatty acids) in the respective product are met.

The Report details and evaluates five possible options to reduce TFA consumption in the EU: 1) The introduction of a mandatory TFA content declaration in the EU; 2) An EU legal limit on the TFA content of food; 3) Voluntary agreements towards reducing TFA in foods and diets at EU level; 4) An EU guidance for national legal limits on the TFA content of food; or 5) The

action could be left at the national level and/or to voluntary reduction efforts. According to the Report, leaving this issue to the EU Member States would not ensure that all EU citizens benefit from the reduction and would continue the current piecemeal approach, negatively affecting the Internal Market. The Commission is currently carrying out an Impact Assessment on a possible EU-based initiative to limit intakes of industrial TFAs in the diet of EU consumers, such as to limit industrial TFAs content in food through self-regulation or through a legally-binding measure, to introduce mandatory labelling of the TFA content of foods on food labels, or to prohibit the use of partly hydrogenated oils, which are the main source of industrial TFAs, in foods manufacturing/preparation through self-regulation or through a legally-binding measure. From 17 November 2017 to 9 February 2018, the Commission asked stakeholders for contributions. The public consultation integrates the targeted consultations with interested stakeholders and national competent authorities already carried out by the Commission and by an external contractor that supported the Commission's work on TFAs. The public consultation was aimed at providing an additional possibility to all stakeholders and individual citizens, with a possible interest in TFAs, to provide their views on key elements of the Impact Assessment.

Regarding letter 'P' of the WHO's '*REPLACE*' plan, while the EU is still debating measures against TFAs, more obvious (industrial and nutritional) solutions to Promote the replacement of industrially produced TFAs with healthier alternatives are also available. However, alternatives, such as palm oil, are often subject to continuous negative and, arguably, illegal, campaigns by public and private entities. Sustainable palm oil can be deemed as the primary alternative to partially hydrogenated fats and oils in food products. It is a natural, sustainable and healthy alternative, which is already available on the market. Palm oil is a vegetable oil that is solid at room temperature and that does not need to be artificially hardened. Palm oil is a balanced oil that contains equal amounts of saturated and unsaturated acids. Therefore, instead of illegally or deceivingly targeting palm oil as a whole, policymakers, companies and civil society organisations should be aware of and promote sustainable palm oil as a key alternative to vegetable oils and fats containing TFAs. Alternatives exist, and they should be used.

At the 71st WHA on 20-26 May 2018, delegates agreed on the WHO's GPW13 designed to help the world achieve the SDGs, with a particular focus on SDG 3 (*i.e.*, Ensuring healthy lives and promoting wellbeing for all at all ages by 2030). The global elimination of industrially-produced TFAs can contribute to achieve this goal through the steps highlighted in the '*REPLACE*' plan. From 4 May to 1 June 2018, the WHO, in an online public consultation, has been calling for comments to review updated draft WHO Guidelines on the *Saturated fatty acid and trans-fatty intake for adults and children*. Following the conclusion of the impact assessment, the Commission will likely present its draft regulation introducing limits on industrial TFAs in foods during the course of 2018/2019. Interested stakeholders, food manufacturers and suppliers of key alternatives should closely follow these developments in the EU and beyond. Regulatory measures with respect to TFAs also look poised to significantly affect the demand for certain healthier vegetable oils on the world market.

Recently Adopted EU Legislation

Market Access

- *Council Decision (EU) 2018/760 of 14 May 2018 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Norway concerning additional trade preferences in agricultural products*

- *Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Norway concerning additional trade preferences in agricultural products*
- *Commission Implementing Regulation (EU) 2018/756 of 23 May 2018 making imports of biodiesel originating in Argentina subject to registration*

Customs Law

- *Commission Implementing Regulation (EU) 2018/787 of 25 May 2018 concerning the classification of certain goods in the Combined Nomenclature*

Trade Remedies

- *Commission Implementing Regulation (EU) 2018/788 of 30 May 2018 amending Implementing Regulation (EU) 2017/1993 imposing a definitive anti-dumping duty on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China as extended to imports of certain open mesh fabrics of glass fibres consigned from India, Indonesia, Malaysia, Taiwan and Thailand, whether declared as originating in these countries or not following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*

Food and Agricultural Law

- *Council Decision (EU) 2018/754 of 14 May 2018 on the conclusion of the Protocol setting out the fishing opportunities and the financial contribution provided for by the Fisheries Partnership Agreement between the European Union and the Republic of Mauritius*
- *Council Decision (EU) 2018/757 of 14 May 2018 denouncing the Partnership Agreement in the fisheries sector between the European Community and the Union of the Comoros*

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