FRATINIVERGANO
EUROPEAN LAWYERS
TRADE PERSPECTIVES©

Issue No. 19 of 20 October 2017

'*Brexit*' visions – the UK looks into its trade and customs future

On 9 October 2017, the Government of the United Kingdom (hereinafter, UK) published the Trade and Customs White Papers, two important documents with respect to the UK's future trade and customs policy after '*Brexit*'. On 11 October 2017, the European Union (hereinafter, EU) and the UK Missions to the World Trade Organization in Geneva sent a joint letter to the Permanent Representatives to the WTO laying out the plans for the '*Brexit*' transition. While a lot remains uncertain and unpredictable, important elements of '*Brexit*' are now taking shape.

On 23 June 2016, the UK had held a *referendum* posing the question on whether the UK should '*remain'* or *'leave'* the EU. The results were published on 24 June 2016. 48.1% of the votes cast were in favour of *'remain'* and 51.9% chose to *'leave'* the EU. A number of scenarios as to the future UK trade policy and trade relationship between the UK and the EU were imaginable (see *Trade Perspectives*, Issue No. 13 of 1 July 2016). The options included a UK membership in the European Free Trade Association (EFTA), a customs union for trade in goods (as currently in place between the EU and Turkey), a comprehensive free trade agreement or, finally, a trade relationship without any special agreement and governed only by the WTO trade and customs rules. By now, the UK has announced its intention to leave the Customs Union with the EU and to become a legally separate customs territory. However, it remains largely unclear how the final trade and customs arrangements will look like. At the same time, all industry sectors are beginning to prepare for '*Brexit*' and its potential consequences (see *Trade Perspectives*, Issue No. 6 of 24 March 2017).

On 29 March 2017, the UK Government had notified the EU of its intention to withdraw from the EU. Article 50 of the Treaty of the Functioning of the EU (hereinafter, TFEU) provides for a two-year period to negotiate the exit, which means that the UK would be scheduled to leave the EU by 29 March 2019. However, Article 50 of the TFEU also provides for the possibility to agree on an extension of the negotiating period. It appears, however, that both sides currently do not envisage to prolong this period of time. Negotiations officially started in June 2017 and the fifth round of negotiations was held from 9 to 12 October 2017. The EU has stated that only if sufficient progress were achieved on a number of important issues, it would begin simultaneous negotiations on the future (trade) relationship with the UK. An additional aspect of those simultaneous negotiations will be the transition period of three years, as proposed by UK Prime Minister Theresa May at the end of September 2017. The key issues, on which the EU seeks clarity before broadening the scope of the negotiations, are the post-'*Brexit*' rights of EU citizens in the UK and of UK citizens in the EU, a financial

settlement for the UK's share of financial commitments undertaken during the UK's EU membership and the issue of Northern Ireland's physical border with EU Member State Ireland. On 3 October 2017, shortly after the fourth negotiating round, EU Chief Negotiator for '*Brexit*' Michel Barnier addressed the European Parliament on the progress of the negotiations. After his remarks, the Parliament held a non-binding vote on the status of the negotiations with the UK and, in particular, on whether sufficient progress had been achieved in order to begin discussions on the future trade relationship. 557 of the 751 Members of the European Parliament voted in favour of delaying such negotiations on the future trade relationship.

In the meantime, the UK Government is working on its own approach to customs and trade policy after leaving the EU. The document '*Preparing for our future UK trade policy*' lays out the key principles of UK policy in the area of trade relations. The '*Customs Bill: legislating for the UK's future customs, VAT and excise regimes*' builds upon the August 2017 document on '*Future customs arrangements - A Future Partnership Paper*'.

The White Paper on '*Preparing for our future UK trade policy'* provides the first clear insights into the UK's future approach to trade policy. While still very general in nature, and not '*ground-breaking*' in its direction, the Paper lists five elements that contain important aspects and also hint at potential areas of controversy or of negotiating friction: 1) Trade that is transparent and inclusive; 2) Supporting a rules-based global trading environment; 3) Boosting our trade relationships; 4) Supporting developing countries to reduce poverty; and 5) Ensuring a level playing field – a UK approach to trade remedies and trade disputes. The first element relates to the general approach and mechanics of future UK trade policy and appears to be rather uncontroversial, providing all stakeholders an opportunity to contribute to the UK's trade policy. The second element concerns the UK's approach to the multilateral trading system, in particular the WTO. Of note is that the UK announces specific steps to ensure that the UK would remain part of the WTO's Government Procurement Agreement (hereinafter, GPA). The GPA is a plurilateral agreement within the framework of the WTO, meaning that not all WTO Members are automatically parties to the Agreement. The current, revised, GPA, entered into force on 6 April 2014. The most interesting elements are elements 3 and 4. Element 3 relates to the UK's future approach on trade agreements with third countries. Most importantly, the White Paper notes that the UK would "*seek to transition all existing EU trade agreements and other EU preferential agreements*". This may sound '*easy*', but may actually pose significant problems. EU trade agreements were negotiated through often long negotiating processes, leading to agreed texts that were a compromise for all parties involved, taking into account all commitments undertaken. The suggested "*transitioning*" would have to be accepted by all partner countries that are parties to the EU's trade agreements, but the envisaged process is not further explained by the UK Government. This transition would require negotiations between the UK and the partner countries to seek agreement to this approach. Element 4 goes into a similar direction, underlining that the UK intends to continue providing preferential market access to developing countries. As these are typically unilateral trade preferences, such as the EU's Generalised System of Preferences (GSP), this would not require negotiations and agreement with the intended beneficiaries. Finally, element 5 is another logical consequence of '*Brexit*', describing the UK's need to develop its own trade defence regime and to prepare to act within the WTO's dispute settlement system.

As for the future customs regime, the UK had previously stated its intention to become a legally separate customs territory. The '*Future Partnership Paper*' on the Customs bill now lists two possible options: 1) A "*streamlined customs arrangement*"; or 2) A "*new customs partnership*". The UK Government notes that these approaches represent different choices for the nature of its relationship with the EU and with countries around the world, but that, in either option, the UK would seek to pursue its independent trade policy objectives. More specifically, a '*highly streamlined customs*' arrangement between the EU and the UK, would

align and simplify requirements, leaving as few additional requirements on EU trade as possible. The second approach, a new customs partnership with the EU, would align the UK's approach in a way that removed the need for an EU-UK customs border. Such approach could involve the UK mirroring the EU's requirements for imports from the rest of the world, where their final destination is the EU. The UK does note that such an approach would be unprecedented and could be challenging to implement. The Paper notes that the Customs Bill would provide the UK Government with the powers needed in a scenario where the UK left the EU without a negotiated agreement on the applicable customs arrangements. While the papers provide more details, many uncertainties remain and a lot will depend on the progress yet to be achieved in the negotiations between the EU and the UK.

One result of the on-going negotiations between the EU and the UK has already been announced, though: the EU and the UK have agreed on the approach to dealing with the consequences of '*Brexit*' for their rights and obligations within the WTO. In a letter sent to all Permanent Representatives to the WTO, the Permanent Representatives of the EU and of the UK informed other WTO Members of how they would deal with the consequences for the multilateral trading system of the WTO. Underlining the need for clarity, predictability and transparency, both parties outlined a few key aspects. Most importantly, they noted that the EU's scheduled commitments for goods, services and public procurement will remain applicable to its territory, but that the EU's existing quantitative commitments in the area of goods, namely through tariff-rate quotas (TRQs), would require certain adjustments to reflect '*Brexit*'.

As for the UK, the letter notes that the UK would draw up its own separate Schedules of Concessions for goods and services, which are supposed to take effect immediately after leaving the EU. In order to minimise disruptions to trade, the UK intends to largely replicate its obligations under the current EU commitments. With respect to the quantitative commitments in the form of TRQs, the future quotas are supposed to be established through an apportionment of the EU's existing commitments and based on current trade flows under each TRQ. Both sides announced that they would follow "*a common approach, inter alia*, *to data and methodology and to engage actively with WTO Members on these*". A similar approach is envisioned for the annual and final bound commitment level specified for domestic agricultural support. Even before this letter was sent in mid-October, the Permanent Representatives of seven important trading partners (*i.e.*, Argentina, Brazil, Canada, New Zealand, Thailand, the US, and Uruguay) had sent a letter to the EU and the UK, voicing their concerns over the considered apportionment of the current TRQs. Concerns, in particular, reportedly relate to TRQs for meat products. Importantly, the approach favoured by the EU and by the UK, and explained in their joint letter, is not yet considered as final. The concerns by those countries reflect the current situation of the EU Single Market, where an EU TRQ applies to all 28 Member States and where a product exported to a specific EU Member State can still be seamlessly moved onwards to another EU Member State. Such seamless onward trade would not exist anymore, should the UK leave the EU Single Market and the Customs Union, as envisaged. Considering the previous approach to establishing WTO commitments, namely through extensive negotiations among all Members, it does appear rather uncommon in the WTO context that two Members would unilaterally decide on their future commitments and on the apportionment to be accorded to other Members, without actually negotiating with those other Members (other than about the data and methodology).

On 19-20 October 2017, a summit of the European Council will take place, bringing together all EU Member States. They will, in a format excluding the UK, *inter alia*, take stock of the negotiations. All stakeholders and trading partners should carefully analyse the current developments and the potential consequences to their commercial interests of the changes resulting from to '*Brexit*'. While any final outcome is still months, if not years, away, trade

negotiations often suddenly accelerate and it is never prudent to neglect them or not being pro-actively involved.

The European Parliament opposes the adoption of the proposed definition of endocrine disruptors in the field of plant protection products

On 4 October 2017, the European Parliament (hereinafter, EP) adopted a resolution objecting to the draft *Commission Regulation amending Annex II to Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market by setting out scientific criteria for the determination of endocrine disrupting properties* and thereby effectively blocking the process for some time. Endocrine disruption is a rather recent way of looking at the toxicity of chemicals, including plant protection products (hereinafter, PPPs) and biocides. The scientific community and public authorities worldwide have been discussing this topic and, in particular, how to regulate it. Significant progress was achieved in recent years, by EU agencies or Committees, as well as international organisations, leading to an improved scientific basis. In June 2016, the European Commission (hereinafter, Commission) presented two legal acts to specify the criteria to identify endocrine disruptors, but the issue has led to some friction with the EP and in the Council.

Endocrine disruptors are chemicals that affect the hormone system of animals and humans. They have three cumulative characteristics: 1) a hormonal function; 2) an adverse effect; and 3) a causality between the two. In 2002, the World Health Organisation (hereinafter, WHO) defined the concept of '*endocrine disruptor*' as a substance or mixture that alters function(s) of the endocrine system and, consequently, that causes adverse health effects in an intact organism, or its progeny, or (sub) populations. In June 2016, the Commission presented two legal acts to specify the criteria to identify endocrine disruptors: a delegated act applicable to the chemical substances falling under *Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products* (hereinafter, Regulation (EU) No 528/2012 on biocides); and a *Commission Regulation applicable to the chemical substances falling under the Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market* (hereinafter, Regulation (EC) No 1107/2009 on PPPs) (see *Trade Perspectives*, Issue No. 12 of 17 June 2016). Both, Regulation (EC) No 1107/2009 on PPPs and Regulation (EU) No 528/2012 on biocides, require that endocrine disruptors be banned.

In accordance with the second paragraph of point 3.6.5 of Annex II to Regulation (EC) No 1107/2009, the Commission was required to present to the Standing Committee on the Food Chain and Animal Health (SCPAFF) a draft of the measures concerning specific scientific criteria for the determination of endocrine disrupting properties. Such draft measure was originally foreseen by 14 December 2013. The Commission's SCPAFF Committee, made up of experts from the EU Member States, on 4 July 2017, agreed on the Commission's draft *Regulation amending Annex II to Regulation (EC) No 1107/2009 by setting out scientific criteria for the determination of endocrine disrupting properties* in the area of PPPs (see *Trade Perspectives*, Issue No. 14 of 14 July 2017). The vote in the SCPAFF (Section Phytopharmaceuticals – PPPs), with 24 EU Member States voting in favour, 3 EU Member States voting against, and 4 EU Member States abstaining, was preceded by several meetings in which the Commission presented revised versions of its draft. In July 2017, a qualified majority of EU Member States within the Council of the EU endorsed the draft Regulation proposed by the Commission.

However, on 28 September 2017, the EP's Committee on Environment, Health and Food Safety (ENVI) rejected the definition and, finally, on 4 October 2017, the EP's plenary voted,

by a majority of 389 votes in favour, 235 against and 70 abstentions, against the current Commission's proposal defining endocrine disrupting chemicals. Members of the EP asserted that the Commission had overstepped its implementing powers, as provided by Regulation (EC) No 1107/2009 on PPPs, in proposing to exempt from the definition certain PPPs specifically designed for having an endocrine effect.

In accordance with point 3.8.2 of Annex II to *Regulation (EC) No 1107/2009 on PPPs*, an active substance is only to be approved if it is not considered to have endocrine disrupting properties that may cause adverse effects on non-target organisms, unless the exposure of non-target organisms to that active substance under realistically proposed conditions of use is negligible (so called '*cut-off criterion for the environment*'). Non-target organisms can be defined as organisms affected by an interaction, for example, a pesticide application, for which they were not the intended recipients. The very last paragraph of the Annex to the draft regulation states that "*if the intended plant protection mode of action of the active substance being assessed, consists of controlling target organisms other than vertebrates via their endocrine systems, the effects on organisms of the same taxonomic phylum as the targeted one, shall not be considered for the identification of the substance as having endocrine disrupting properties with respect to non-target organisms*".

The EP, in its resolution of 4 October 2017, focussed on this paragraph and argued that it is not scientific to exclude a substance with an intended endocrine mode of action from being identified as an endocrine disrupter for non-target organisms. The EP noted that the General Court of the European Union, in its judgment in Case T-521/14 of Sweden vs the Commission, clearly stated that the specification of scientific criteria for the determination of endocrine-disrupting properties can only be carried out objectively, in the light of scientific data relating to the endocrine system, independently of any other considerations, in particular economic considerations. Therefore, in view of the EP, the draft regulation cannot be considered to be based on objective scientific data related to the endocrine system, as required by the Court, and the Commission would thereby exceed its implementing powers. The EP further argued that the actual (*i.e.*, '*non-scientific*') intention of this last paragraph was clearly spelled out in the summary report of the SCPAFF held in Brussels on 28 February 2017, which states that "*furthermore, the rationale behind the provision on active substances with intended endocrine mode of action (below called growth regulators (GR)) was explained. [...] The provision on GR allows that the cut-off criteria will not be applied to substances with an intended endocrine mode of action [...]*".

The last paragraph of the draft Commission Regulation effectively creates a derogation from the cut-off criterion laid down in point 3.8.2 of Annex II to Regulation (EC) No 1107/2009. The EP recalls its resolution of 8 June 2016 on endocrine disruptors (on the state-of-play following the judgment in Case T-521/14), which stresses that "*the General Court ruled that the specification of scientific criteria can only be carried out in an objective manner on the basis of scientific data related to the endocrine system, independently of any other consideration, in particular economic ones, and that the Commission is not entitled to change the regulatory balance laid down in a basic act via the application of powers delegated to it pursuant to Article 290 [of the Treaty on the Functioning of the European Union (TFEU)]*". In its resolution of 4 October 2017, the EP argues that the same limitations of power apply to the Commission in the context of an implementing act under the regulatory procedure with scrutiny by the Council and the EP.

According to the Commission communication of 15 June 2016 on endocrine disruptors and the draft Commission acts, the issue faced by the Commission in this exercise was to establish criteria to determine what is or is what not an endocrine disruptor for the purposes of plant protection products and biocidal products, not to decide on how to regulate these substances. Thereby, the regulatory consequences have already been set by the legislator in its measures on PPPs and biocidal products. The EP's resolution further argues that the cut-

off criterion laid down in point 3.8.2 of Annex II to Regulation (EC) No 1107/2009 constituted an essential element of the regulation and that, in accordance with long-standing case law, the adoption of regulatory elements that are essential to a given matter was reserved to the EU legislature and may not be delegated to the Commission. Therefore, in the EP's argument, the Commission had exceeded its implementing powers by modifying an essential regulatory element of Regulation (EC) No 1107/2009, contrary to the recognition of its limits of power established in Case T-521/14, contrary to its assertions in the Commission communication of 15 June 2016, and contrary to the fundamental EU principle of the rule of law. Even if the developments in scientific and technical knowledge were to provide valid grounds for introducing a derogation, as regards the approval conditions of substances with an intended endocrine mode of action, such a derogation could, according to the EP, only be introduced through a legislative procedure to amend Regulation (EC) No 1107/2009 in accordance with Article 294 of the TFEU.

In its resolution of 4 October 2017, the EP basically said that the Commission had overstepped its powers by including a loophole that would exempt some chemicals in PPPs from being identified as endocrine disruptors. This was deemed unlawful, the EP argued, because it would change an essential element of the EU's PPP legislation, something that could only be done through the co-decision procedure. In the case of PPPs, the criteria defining endocrine disruptors were set by comitology - a technical committee (*i.e.*, the SCPAFF) featuring the Commission and expert representatives of EU Member States - rather than co-decision, the ordinary legislative process that gives the EP and the Council equal rights to amend and approve a proposal by the Commission.

In a statement following the EP's October 2017 vote on the resolution regarding the Commission's proposal for the identification of criteria defining endocrine disruptors in the area of PPPs, Commissioner for Health and Food Safety Vytenis Andriukaitis regretted the vote in the EP, stating that in this case "*no deal is a bad deal for EU citizens*". He went on saying that the EP decided to stop the adoption of scientific criteria that would have ensured better protection of human health and the environment, as well as served as a stepping stone to a wider strategy on endocrine disruptors. In conclusion, the scientific criteria put forward by the Commission, which had been supported by the EU Member States in early July after months of thorough discussions, cannot be adopted and the Commission will now need to reflect on the next steps to take.

The EP's Resolution of 4 October 2017 calls on the Commission to withdraw the draft regulation and submit without delay a new one to the SCPAFF and, more specifically, to modify the draft regulation by deleting its last paragraph. Reportedly, a consensus in the Council would not have been reached without the inclusion of this specific provision, which is at the centre of the EP's resolution. This particular provision was added at the request of some EU Member States during the negotiations to improve their policy on the sustainable use of PPPs, and was instrumental in getting the necessary support. Reportedly, Germany insisted on the derogation as a condition for its support, and the fragile Council majority would fall without the support of the largest EU Member State. The Commission could, therefore, draw the conclusion that it would be impossible to strike a deal acceptable to both the EP and the Council, at least under the current mandate. It could also put forward a proposal that would have to be adopted by co-decision (instead of comitology) - a step that would take years.

The second legislative procedure, for a Commission delegated act setting out scientific criteria for the determination of endocrine-disrupting properties in the field of biocides, is pending. On 4 September 2017, the European Commission adopted the scientific criteria to identify endocrine disruptors in the field of biocides. The adopted text was sent to the EP and the Council for a scrutiny period of two-months. It must be expected that also the delegated act on biocides will likely not be adopted will not prospect, since the objective was to fully

align the criteria in both areas and to have the same criteria applicable in both sectors. Interested parties should continue monitoring developments and take a proactive stand in the ongoing development of legislation on the criteria for defining endocrine disruptors (also beyond PPPs and biocides) and guidance documents for the approval of PPPs and biocides.

EU Member States likely to vote soon on the renewal of glyphosate's authorisation, while the European Parliament asks to phase it out

On 25 October 2017, the European Commission's (hereinafter, Commission) Standing Committee on Plants, Animals, Food and Feed (hereinafter, SCPAFF), made up of experts from all EU Member States, will exchange views and possibly issue an opinion on a draft *Commission Implementing Regulation renewing the approval of the active substance glyphosate in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Implementing Regulation (EU) No 540/2011*. The draft Commission Implementing Regulation foresees that the active ingredient glyphosate's authorisation in plant protection products would be renewed for another ten years. Meanwhile, on 19 October 2017, the European Parliament's (hereinafter, EP) Committee on the Environment, Public Health and Food Safety adopted a non-binding Resolution to phase glyphosate out by 2020.

Glyphosate is an active substance patented in the early 1970s and widely used in herbicides. Glyphosate-containing herbicides were introduced to the consumer market in 1974 as broad-spectrum herbicides and quickly became best sellers (in particular *Monsanto*'s RoundUp). Since the patent expired in 2000, glyphosate-containing herbicides have been marketed by various companies and hundreds of plant protection products containing glyphosate are currently registered in Europe for use on crops. Glyphosate-containing herbicides are applied to the leaves of plants to eradicate both broadleaf plants and grasses. For example, glyphosate may be used to kill weeds in a field before a crop is sown, before it germinates, or after it has been harvested. Glyphosate-containing products are also sprayed onto crops before they are harvested, in order to make them dry out, or to make them easier to harvest (this practice is called desiccation). Glyphosate is used as a desiccant on cereals, oilseed rape, maize and sunflowers. Other approved uses for glyphosate-based herbicides in the EU include weed control in vineyards, olive groves and fruit orchards. Glyphosate is also used on grass pastures, in forestry, in urban and garden applications, and for clearing railway lines. It should be noted that there are glyphosate-tolerant GM crops, which allow its use (where authorised) on wide areas of land. Glyphosate accounts for about 25% of the global herbicide market. Research indicates that, in 2014, 825 million metric tonnes of glyphosate were used globally, of which 90% in agriculture.

Under *Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market* (hereinafter, Regulation 1107/2009 on PPPs), plant protection products undergo a dual authorisation process. First, active substances are authorised for a certain period of time (proportionate to the possible risks inherent in the use of such substances and not exceeding 15 years) at the EU level by the Commission through implementing regulations, based on risk assessments conducted by the European Food Safety Authority (hereinafter, EFSA) and an opinion issued by the SCPAFF, consisting of EU Member State representatives. Plant protection products containing the active substance may then be authorised at EU Member State level.

The approval of the active substance glyphosate in the EU was initially valid until 31 December 2015, but was extended several times in order to have enough time for a comprehensive and thorough re-evaluation of the active substance. *Commission Implementing Regulation (EU) 2016/1056 of 29 June 2016 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval period of the active*

substance glyphosate established a new deadline of "*6 months from the date of receipt of the opinion of the Committee for Risk Assessment of the European Chemicals Agency by the Commission (hereinafter, ECHA) or 31 December 2017, whichever is the earlier*".

The debate on glyphosate concerns its safety in general and, in particular, its carcinogenic risks. In November 2015, the EFSA announced that there was insufficient evidence to conclude that glyphosate could cause cancer. Following a peer review of the risks, the EFSA concluded that "*glyphosate is unlikely to pose a carcinogenic hazard to humans and the evidence does not support classification with regard to its carcinogenic potential….*" Critics have asserted that the EFSA's determination was based in part on unpublished industry-funded studies. The EFSA's finding also conflicted with the International Agency for Research on Cancer's (IARC) findings, reached in March 2015, that glyphosate was "*probably carcinogenic to humans*". The EFSA conceded that it considered the IARC's findings, but reached the opposite conclusion regarding glyphosate's potential carcinogenicity. In the US, Monsanto is defending a large number of lawsuits brought by individuals claiming that they developed non-Hodgkin's lymphoma (NHL) and other serious health problems due to Roundup exposure. All federally-filed lawsuits have been consolidated into the US District Court for the Northern District of California for pre-trial proceedings.

On 15 March 2017, the ECHA's Committee for Risk Assessment (hereinafter, RAC) agreed to maintain the current harmonised classification of glyphosate as a substance causing serious eye damage and being toxic to aquatic life with long-lasting effects. The RAC concluded that the available scientific evidence did not meet the criteria to classify glyphosate as a carcinogen, as a mutagen, or as toxic for reproduction. The Commission received the ECHA's assessment on 15 June 2017. The extension of the authorisation was, therefore, prolonged. In May 2017, the Commission agreed that the discussions with EU Member States, regarding the possible renewal of the approval of glyphosate, could restart. The Commission's proposal was published in mid-July and discussions with EU Member States restarted on 20 July 2017. The Commission is proposing a renewal of the approval of glyphosate for ten years. The Commission also included in its proposal the following aspects: 1) specific provisions that EU Member States have to take into account when considering applications for glyphosate-products (*i.e.*, protection of groundwater and terrestrial animals and non-target plants); 2) certain elements that EU Member States must verify during the assessment and decision making for authorisation (*e.g.*, minimise the use in public areas); and 3) the ban of POE-tallowamine (a co-formulant previously used in glyphosate-based products) put in place in 2016 (see *Trade Perspectives*, Issue No. 7 of 8 April 2016). The Commission aims at finalising discussions in the last quarter of 2017, before proceeding to vote on the re-approval. The current authorisation expires on 15 December 2017. However, many EU Member States have yet to adopt a position on the matter, meaning that the Commission's attempt to achieve a qualified majority of countries supporting the proposal in the SCPAFF is not yet assured. The SCPAFF was expected to vote on the renewal of glyphosate during its meeting in the first week of October 2017, but the matter was postponed to 25 October 2017 as the only agenda item.

The uncertainty over the renewal of glyphosate was reportedly one of the reasons why many British farmers voted to leave the EU in May 2016 (see Trade Perspectives, Issue No. 10 of 19 May 2017). France's possible vote in the SCPAFF against renewing the authorisation could block the EU from obtaining the votes needed to renew the product's authorisation. The authorisation will be renewed if a qualified majority of EU Member States vote in favour of renewal. In the past, Germany and France abstained from voting on glyphosate's re-authorisation and glyphosate only maintained its approval status by a thin majority vote. However, if France were to vote against the approval, the balance could swing in the other direction. Reportedly, also Italy has expressed its intention to vote against the proposal, while others, like Germany, Greece, Ireland and Portugal, are still in the process of forming a

position. Bulgaria, Denmark, Estonia, the Netherlands, Latvia, Spain, Sweden, and the UK, reportedly support the renewal.

Against the background of the ongoing debate over the renewal of glyphosate's authorisation in the EU, the EP's Committee on the Environment, Public Health and Food Safety and the Committee on Agriculture and Rural Development held, on 11 October 2017, a public hearing, during which MEPs discussed with a number of experts the scientific basis for the EU's risk assessment of glyphosate and the alleged influence of industry representatives on this assessment in the US and the EU, in the light of the so-called '*Monsanto Papers*'.

At the European Parliament's hearing, a number of important points were made. The draft Regulation addresses one area of concern that regulators do need to address, which is the issue of co-formulants used with glyphosate. Furthermore, EFSA, ECHA and the environment protection agencies of a number of third countries, including Australia, Canada and Japan, have all concluded that glyphosate is not a carcinogen. Yet, there are claims to the contrary. Against this background, policymakers (who are typically not toxicologists) are left with the difficult choice of relying on the scientific expertise of the agencies, or to ignore it. This way, there is a considerable risk of downgrading the regulatory system, denying farmers an important production tool, and unnecessarily causing fears among citizens about products, which have helped to produce food in abundance in the EU for decades. Finally, it was stated in the hearing at the European Parliament that, even those who are in favour of banning glyphosate, admit that there would be huge consequences for European agriculture. There is also the reality that none of the EU's current trading partners or of its potential future partners are likely to ban glyphosate. So, if EU Member States were to refuse to grant their approval for glyphosate to be authorised beyond the end of this year, it would no longer be available to farmers, yet there would be imports into the EU of animal feed and raw materials produced using glyphosate-based products.

Meanwhile, on 19 October 2017, the EP's Committee on the Environment, Public Health and Food Safety adopted (with 39 votes in favour and 9 against, while 10 abstained) a non-binding Resolution calling on the Commission to adopt the necessary measures to phase out the active substance glyphosate in the EU by no later than 15 December 2020, ensuring that no use of glyphosate would be authorised after that date.

Whether the authorisation of glyphosate will be renewed on 25 October 2017 by the SCPAFF, and for how long, is uncertain. There is clearly a need for truly independent scientific expertise in order to guide the EU decision makers on complex issues such as PPPs. The current debates on the safety of glyphosate appear to be carried out in a very emotional way. Perhaps, it would not be wise to just renew the authorisation for another ten years as this may just postpone the matter. A shorter re-authorisation period of perhaps five years could allow to look for alternative herbicides and would also make it possible to look at the way in which agriculture can be improved with innovation in order to reduce pesticide use. This way, farmers would not be deprived '*at short notice*' of an important production tool. Interested stakeholders should monitor the developments and take the appropriate pro-active stands.

Recently Adopted EU Legislation

Market Access

- *Commission Implementing Regulation (EU) 2017/1862 of 16 October 2017 amending Regulation (EC) No 1235/2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries*

Customs Law

- *Commission Implementing Regulation (EU) 2017/1916 of 19 October 2017 fixing the allocation coefficient to be applied to the quantities covered by the applications for import licences lodged from 1 to 7 October 2017 under the tariff quotas opened by Regulation (EC) No 341/2007 for garlic*

- *Commission Implementing Regulation (EU) 2017/1917 of 19 October 2017 fixing the allocation coefficient to be applied to the quantities covered by applications for import licences lodged until 9 October 2017 under the tariff quotas opened by Regulation (EC) No 891/2009 in the sugar sector and suspending the submission of applications for such licences*

- *Commission Implementing Regulation (EU) 2017/1918 of 19 October 2017 fixing the allocation coefficient to be applied to the quantities on which applications for import licences and applications for import rights lodged from 1 to 7 October 2017 are based and establishing the quantities to be added to the quantity fixed for the sub-period from 1 April to 30 June 2018 under the tariff quotas opened by Regulation (EC) No 616/2007 for poultrymeat*

- *Commission Implementing Regulation (EU) 2017/1835 of 9 October 2017 fixing the import duties in the cereals sector applicable from 10 October 2017*

Food and Agriculture Law

- *Commission Implementing Regulation (EU) 2017/1914 of 19 October 2017 concerning the authorisation of salinomycin sodium (Sacox 120 microGranulate and Sacox 200 microGranulate) as a feed additive for chickens for fattening and chickens reared for laying and repealing Regulations (EC) No 1852/2003 and (EC) No 1463/2004 (holder of authorisation Huvepharma NV)*

Other

- *Council Decision (EU) 2017/1921 of 16 October 2017 on the position to be adopted on behalf of the European Union within the Joint CARIFORUM-EU Council of the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, as regards the establishment of a list of arbitrators*

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