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South Africa requests WTO dispute settlement consultations with the EU on restrictive measures regarding imports of citrus fruit: A *juicy* trade dispute?

South Africa has decided to challenge the EU's long standing restrictions regarding *citrus black spot*. On 16 April 2024, South Africa announced that it had requested consultations with the EU at the World Trade Organization (hereinafter, WTO) concerning the EU's phytosanitary measures relating to citrus black spot that affect the importation of citrus fruit from South Africa into the EU. South Africa contends that the EU's measures are inconsistent with various provisions of the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter, SPS Agreement). On 24 April 2024, the WTO circulated South Africa's request for consultations with the EU to the WTO Members. This article provides an overview of the EU's classification of *citrus black spot,* the measures taken to prevent its introduction and the spread within the EU, as well as South Africa's contention against the EU's measures in light of the applicable international trade rules and the relevance of the citrus fruit industry for its economy.

The EU's classification of 'citrus black spot'

'Citrus black spot' is a plant disease caused by the fungus '*Phyllosticta citricarpa (McAlpine) Van der Aa'*, which affects citrus fruits. Harmless to humans, *citrus black spot* damages the fruits' appearance by causing spots on fruit leaves and blemishes in fruits, potentially reducing both the quality and quantity of harvests. Although *citrus black spot* disease is present in regions of Africa, Asia, Oceania, and South America, it has never been detected in Europe.

Phyllosticta citricarpa (McAlpine) Van der Aa, is categorised as a quarantine pest not known to occur in the EU under Part A of Annex II to *Commission Implementing Regulation (EU) 2019/2072* on establishing uniform conditions for the implementation of EU rules regarding protective measures against pests of plants, which, in relevant part, lays down the requirements for the importation into the EU of plants and fruits susceptible of carrying this disease and other harmful organisms. *Phyllosticta citricarpa (McAlpine) Van der Aa* is also considered as a "*priority pest*" under *Commission Delegated Regulation (EU) 2019/1702 establishing the list of priority pests.* Notably, Recital (2) thereof defines *citrus black spot* as a "*Union quarantine pest*" that is either not present in the EU or present only in limited areas or

infrequently, and that has the most severe potential impact economically, socially, or environmentally.

Measures to prevent the introduction and the spread of citrus black spot in the EU

Over the past decades, the EU has established measures intended to prevent the introduction into and the spread within the EU of *citrus black spot.* On 11 December 2013, the EU adopted the first emergency measures applicable specifically to citrus from South Africa (see *Trade Perspectives*, Issue No. 20 of 31 October 2014). On 2 July 2014, the EU had adopted a set of requirements on imports of citrus fruits from South Africa. This followed the publication by the European Food Safety Authority (hereinafter, EFSA) of the *Scientific Opinion on the risk of Phyllosticta citricarpa (Guignardia citricarpa) for the EU territory with identification and evaluation of risk reduction options* on 21 February 2014, which concluded that a risk of *citrus black spot* disease entering the EU was "*moderately likely*" for citrus fruits without leaves, and that the possibility of the establishment of *citrus black spot* disease was also "*moderately likely*". In 2017, the controversy continued, with Spain arguing that inspections in the Netherlands (a major entry point for South African citrus) were less strict than those in Spain, potentially allowing the disease to enter the EU, but no further measures were taken (see *Trade Perspectives*, Issue No. 8 of 21 April 2017).

The most recent measures on *citrus black spot* were introduced by *Commission Implementing Regulation (EU) 2022/632 of 13 April 2022 setting out temporary measures in respect of specified fruits originating in Argentina, Brazil, South Africa, Uruguay and Zimbabwe*. This Regulation specifies in its recitals that the introduction of these measures is due to past interceptions of infected fruit shipments upon arrival in the EU from certain countries, which evidenced an increased risk, and the EU's aim to protect citrus crops and the related industry from the pathogen. The measures follow a risk-based approach with stricter requirements for countries with a higher number of past non-compliances.

The targeted fruits are defined in Article 2(2) of that Regulation and, with respect to South Africa, Recital (11) thereof states that, due to the high number of non-compliances reported by EU Member States in 2021 for the specified fruits from South Africa, there was a need to set stricter sampling requirements to detect the pests on the citrus fruits along different stages in the packing process "*until they are ready for export*". For citrus fruits not intended for industrial processing, the EU import requirements are set out in Articles 4 and 5 and Annexes I to V to *Commission Implementing Regulation (EU) 2022/632* and include the use of an import certificate identifying the field from which the fruits originated or a visual inspection of the consignment. Annex III to *Commission Implementing Regulation (EU) 2022/632* provides additional conditions to be met before introducing the citrus fruits into the EU, including that the fruits must originate from approved sites that have undergone pest treatments and inspections, that such fruits must be accompanied by a phytosanitary certificate, and that they must originate from a site with no history of infection by the targeted pest.

The requirements for citrus fruits destined exclusively for industrial processing are set out in Articles 6 to 9 of *Commission Implementing Regulation (EU) 2022/632*, and include conditions for producing, harvesting, packaging, labelling, and movement within the EU, as well as processing. Although, according to the above-mentioned EFSA opinion from 2014, a risk of spreading of the *citrus black spot* disease via the fruit itself is not to be discarded, these requirements are, arguably, onerous and could make South Africa's citrus fruits commercially unattractive for EU industrial processors, due to the potentially high costs of compliance with the requirements. For example, Article 7(2) states that "*any movement of the specified fruits shall be carried out under the supervision of the competent authority of the Member State where the point of entry is situated and, where appropriate, of the Member State where the processing will take place*". Additionally, Article 8 establishes, *inter alia*, that the fruits must be "*processed at premises situated in an area where no citrus fruit is produced*", as well as requirements concerning the handling of the related waste.

South Africa's fight for fair EU market access

South Africa's contentions in its WTO request for consultations concern "*certain aspects of the import regime imposed by the EU on citrus fruit from South Africa"* found in seven EU legal instruments listed in the request. More specifically, South Africa states that, "*since at least 1992, the EU has prohibited the importation of South African citrus fruit affected by Phyllosticta citricarpa (McAlpine) Van der Aa, despite the fact that citrus fruit is not a viable pathway for the transmission of this organism",* noting that, *"without sufficient scientific reasons, the EU has categorised this organism as a quarantine pest for citrus fruit without leaves and furthermore as a "priority pest".* South Africa further argues that "*as a direct result of this erroneous categorisation",* the EU imposes burdensome requirements *"that must be met in order to import specified fruits into the EU*".

South Africa contests the scientific basis of the EU's import regime for its citrus fruits, arguing that it violates WTO rules, notably, the SPS Agreement. South Africa claims that the EU's import regime lacks proper scientific foundation. First, South Africa contends that the measures are not demonstrably "*based on scientific principles*" or supported by "*sufficient scientific evidence*" (violating Article 2.2). Second, South Africa argues that the EU did not base its rules on relevant international standards, nor did it provide justification for deviating from them (violating Articles 3.1 to 3.3). Finally, South Africa emphasises that the measures do not consider all relevant factors for a proper risk assessment, including scientific evidence and economic impact (violating Articles 5.1 to 5.3). As an example, South Africa argues that the EFSA's 2014 opinion and the EFSA's 2020 pest survey card on *Phyllosticta citricarpa* do not constitute sufficient scientific evidence for the current restrictions. Given the past record of imports affected by the disease, as well as its potential to deteriorate the fruit or produce premature fruit drop in severe cases, the EU could argue that these rules are necessary to protect plant health and are, therefore, WTO-compliant. Furthermore, when it comes to the scientific basis of the risks posed by the disease, it is important to bear in mind that the EU does follow a risk-based approach, based on the precautionary principle, which allows to take preventive action to avoid potential harm, even if the exact risk is not yet fully established (see *Trade Perspectives*, Issue No. 8 of 22 April 2024).

South Africa additionally claims that the EU failed to adapt its import regime for South African citrus fruit to the "*phytosanitary characteristics of the area (…) to which the product is destined*" and has failed to "*recognize the concepts of pest- or disease-free areas*", which, it argues, would be inconsistent with Articles 6.1 and 6.2 of the SPS Agreement. In this regard, South Africa could be expected to argue that the EU should adapt its import regime of citrus fruits from South Africa so that citrus fruits can be freely imported into areas of the EU where citrus fruit are not grown and harvested (*e.g.*, some northern and western parts of the EU), and from those areas classified as pest-free. Finally, South Africa claims that the EU is not fulfilling its obligations under Article 8 of and Annex C to the SPS Agreement, particularly in relation to control, inspection, and approval procedures, as well as the handling of complaints and fees for imported products.

The sour taste of trade: Balancing market access and risk

In a statement, South Africa's Department for Trade Industry and Competition notes that the EU's requirements involve "*a detailed spray programme and inspections at orchard and packhouse level with significant financial burden and other unintended consequences for the South African industry*". The statement refers to the relevance of the sector for South Africa's economy and calls for an alternative solution to protect exports to the EU, a major importer. This is already the second WTO case that South Africa has brought against the EU in relation to citrus fruit. The first case was initiated in July 2022 (*DS613*), following the decision of the EU to impose mandatory cold treatment for citrus fruits imported into the EU, mainly due to the pest '*Thaumatotibia leucotreta'*, known as *false codling moth*.

The more stringent measures have been welcomed by EU citrus growers. For instance, farmer associations *AVA-ASAJA* and *La Unió* from the citrus-growing region of Valencia consider that the stricter requirements for imports are necessary considering the risk that the disease poses

for the industry. These associations argue that the entrance of the pathogen into the EU would increase production costs considerably due to the strict rules for pesticides of the EU and that the cosmetic damage to the fruit would also threaten sales, a non-minor issue according to the associations. Lastly, the associations point at the all-time high record of interceptions of imports affected by *citrus black spot* from South Africa in 2023 to express their mistrust vis-à-vis South Africa's engagement with respect to the control of pests.

Towards a sustainable solution?

The SPS Agreement is fundamentally based on the idea of balancing the risk of SPS-related harm with the economic benefits of trade. It allows WTO Members to adopt science-based measures to protect, *inter alia*, plant life or health, provided that they are not more trade-restrictive than necessary. In the context of this trade dispute, the EU appears to have moved closer to a zero-risk approach, following its traditional risk-based approach and the concerns of the industry, in a manner that, arguably, could unduly inhibit trade. Interested stakeholders should closely monitor the consultations, which South Africa proposed to take place "*at the WTO in Geneva between 6 and 8 May 2024, or earlier if required*", given the urgency of the matter due to the perishable nature of the citrus fruits concerned by the EU's measures.

Navigating the complexities of the EU's new Corporate Sustainability Due Diligence Directive

On 24 April 2024, the European Parliament voted in favour of the EU's *Corporate Sustainability Due Diligence Directive* (hereinafter, CSDDD) with 374 votes in favour, 235 against, and 19 abstentions. The CSDDD is poised to redefine the landscape of corporate responsibility and to introduce stricter measures for certain businesses operating within the EU. The CSDDD will require covered companies to conduct a comprehensive due diligence assessment throughout their respective supply chains with the aim of identifying, preventing, and mitigating adverse impacts on human rights and the environment. Therefore, it is imperative for businesses and trading partners to comprehend the nuances and implications of this landmark legislation.

Tracing the legislative journey of the *Corporate Sustainability Due Diligence Directive*

On 10 March 2021, the European Parliament adopted a Resolution calling on the European Commission (hereinafter, Commission) to address the need for enhanced corporate accountability and sustainability practices within the EU. This Resolution set the stage for the Commission's *Proposal for a Directive on Corporate Sustainability Due Diligence*, published on 23 February 2022 (see *TradePerspectives*, Issue No. 6 of 28 March 2022). The Proposal had the intention to address societal expectations by requiring economic operators to identify, prevent, and mitigate adverse impacts on human rights and the environment.

After the respective internal discussions, the EU co-legislators, the Council of the EU (hereinafter, Council) and the European Parliament, presented their respective positions and proposed amendments. Discrepancies between the two Institutions, notably regarding the definition of '*value chain*' and the scope of the Directive, posed difficulties during the inter-institutional *trilogue* negotiations in 2023. On 14 December 2023, the Council and the European Parliament did reach a provisional agreement on the text of the Directive with the Commission. However, despite this agreement, the CSDDD initially failed to pass in the Council in February 2024, due to Germany's announcement that it would abstain and subsequent postponements of the vote. A key issue for certain stakeholders in Germany was the consideration that the Directive would be too strict for businesses, in particular for small and medium enterprises (hereinafter, SMEs). Ultimate approval in the Council was achieved on 15 March 2024, after the Council introduced a number of changes to the previously agreed text. On 24 April 2024, the European Parliament adopted the Corporate Sustainability Due Diligence Directive, accepting the last minute amendments by the Council. The CSDDD will

now go to the Council for a final approval, before it can be published on the Official Journal of the EU. The vote in the Council is expected to take place on 23 May 2024.

The Directive in a nutshell

In essence, the CSDDD establishes a legal framework for mandatory human rights and environmental due diligence obligations for EU and non-EU companies falling within the scope of the Directive. The CSDDD's primary objective is to mandate a comprehensive due diligence assessment across the chain of activities of covered companies operating within the EU, as well as those of non-EU companies that place products on the EU's internal market.

The due diligence obligations can be grouped into four main clusters: 1) Identification and management: Companies will need to identify actual and potential negative impacts on human rights and the environment in their own operations and throughout their chains of activity. Once such impacts have been identified, companies must take steps to cease, prevent, and mitigate these impacts. This may lead to changes in suppliers, investments in sustainable practices, and/or process improvements; 2) Reporting and monitoring: Companies must report their findings and the actions taken to cease, prevent, or mitigate the identified impacts by publishing an annual statement on their websites. Additionally, companies must continuously monitor their respective chains of activity to ensure compliance with their sustainability objectives; 3) Grievance mechanisms: Companies must establish a grievance mechanism for workers and stakeholders to raise issues. In addition, companies must design strategies to mitigate the impacts, when they occur; and 4) Alignment with the *Paris Agreement*: Companies must implement a transition plan to align business models with the objectives of the *Paris Agreement*, notably with the objective of limiting global warming to 1.5°C. These plans must include assessments of business resilience, identification of decarbonisation strategies, and consideration of stakeholder interests and climate impacts.

With the exception of certain communication obligations, the CSDDD will apply gradually to EU companies, as well as to non-EU companies that are active on the EU's internal market, as follows: 1) From 2027: Companies with more than 5,000 employees and a worldwide turnover above EUR 1,500 million; 2) From 2028: Companies with more than 3,000 employees and a worldwide turnover above EUR 900 million; 3) From 2029: Companies with more than 1,000 employees and a worldwide turnover above EUR 450 million. The companies covered by the CSDDD's obligations are considerably limited compared to the scope originally agreed in December 2023, which foresaw that already companies with more than 500 employees and a worldwide turnover of above EUR 450 million were to be covered. Companies with franchising or licensing agreements in the EU, generating a significant portion of their revenue from royalties, will also fall within the scope of the Directive if their worldwide turnover surpasses EUR 80 million. Non-EU companies reaching equivalent turnover thresholds in the EU market will also be subject to the obligations.

The CSDDD removes the "*high-risk sectors*" approach, which was still included in the text agreed in 2023 and which listed a broad range of industries for particular attention, namely textiles, leather and related products, agriculture, forestry, fisheries, the manufacture of food products, and mineral resources. Instead, the CSDDD states that the Commission must issue guidelines "*for specific sectors or specific adverse impacts*". A review provision remains, which, if deemed necessary, could allow for the list of high-risk sectors to be reintroduced at a later stage.

Another significant change, compared to the text agreed in 2023, concerns the narrowing of the due diligence obligations for covered companies to the "*chain of activity*" instead of the entire value chain. The Commission's Proposal foresaw that due diligence obligations would apply to activities across the value chain, including both upstream activities, such as design and extraction, and downstream activities, such as distribution and storage. The provisional agreement with other institutions introduced the "*chain of activity*" concept, which covers only specifically-listed elements of the value chain, upstream and downstream. In the text agreed in 2024, the definition of downstream "*chain of activities*'' has been narrowed by deleting the

references to the disposal of the product and by limiting it "*to the distribution, transport and storage of the product, where the business partners carry out those activities for the company or on behalf of the company*".

***Ensuring compliance*: Navigating the impacts of the CSDDD for businesses**

Ensuring compliance with the CSDDD obligations will entail integrating due diligence into corporate policies, investing in related infrastructure, obtaining contractual assurances from partners, and supporting smaller business partners in meeting the regulatory requirements. To enforce compliance, EU Member States will establish supervisory authorities tasked with investigating and penalising non-compliant economic operators. Penalties may include fines of up to 5% of a company's net worldwide turnover and mandatory compensation for damages resulting from breaches of due diligence obligations. Non-compliance with the CSDDD regulations may result in various sanctions, including "*naming and shaming*" (*i.e.*, the publication of non-compliant companies' names on a public website), market removal of goods, or fines. Non-EU companies failing to adhere to the Directive may also face exclusion from EU public procurement opportunities.

While SMEs fall outside the direct scope of the CSDDD, they are poised to experience indirect impacts. Therefore, despite the definition of '*downstream chain of activities*' being limited to business partners directly linked to the company's activities, the ripple effects can still reach SMEs involved in broader supply chains. In other words, even if SMEs themselves do not directly meet the criteria outlined in the CSDDD, their business relationships with covered companies may subject them to compliance pressures and expectations regarding sustainability practices.

Thus, businesses must prepare for the implications of the CSDDD, even if (initially) not falling (directly) within its scope. The preparation should involve integrating the Directive seamlessly into their corporate strategies, identifying disparities in existing processes, and appointing accountable individuals or departments. Elevating governance standards at both board and management levels is crucial, along with ensuring robust compliance frameworks. Adequate data collection processes for reporting, employing suitable risk assessment tools, and developing remediation strategies for breaches, are further essential steps. Additionally, establishing contractual agreements with partners to uphold the company's strategy to comply with the CSDDD obligations may be useful. Finally, liability considerations, including compliance verification measures, warrant attention and efforts.

Reactions from businesses and trade associations vary, but an overall call for a workable way forward has been voiced. More specifically, businesses have called on the Commission to maintain a focus on avoiding excessive burdens for in-scope businesses, while ensuring the consistent application and enforcement of the CSDDD across EU Member States. As a Directive, EU Members States will have three years to transpose it into their respective national legal systems and there is, as always, a risk of '*gold plating*', which refers to EU Member States going further in their transposition than the Directive requires. Possible divergences in the implementation and enforcement of the CSDDD has been causing concerns among businesses, including with respect to the related compliance costs and operational complexities.

A new era of corporate accountability?

The EU's Corporate Sustainability Due Diligence Directive may bring about a new era of corporate governance and sustainability for businesses operating in the EU. By mandating rigorous due diligence practices and fostering transparency and accountability, the Directive underscores the EU's commitment to advancing responsible business conduct. Businesses will have to navigate the complexities of the Directive, embrace more sustainable practices, and champion the principles of corporate accountability and environmental stewardship.

Another questionable import restriction? Indonesia's Ministry of Industry issues new law to restrict the import of electronic products

On 6 February 2024, Indonesia's Minister of Industry enacted *Minister of Industry Regulation Number 6 of 2024 concerning Procedures for Issuing Technical Considerations for the Import of Electronic Products* (hereinafter, *MOI Regulation No. 6/2024*), which aims at increasing the utilisation of electronic products that have been manufactured domestically and at supporting the development of Indonesia's domestic electronics industry to be more competitive in the global market. The Regulation introduces new requirements for the import of 139 tariff lines related to electronic products. More specifically, imports of products under 78 tariff lines must be accompanied by import permits issued by Indonesia's Ministry of Trade, while the products under other 61 tariff lines must be accompanied by a "*Surveyor Report*". The new requirements concern, *inter alia*, air conditioners, laptop computers, televisions, and fibre optic cables, as well as components, such as liquid crystal devices that are commonly used in smartphones and computers. With the new requirements, Indonesia's Ministry of Industry seeks to create more opportunities for domestic manufacturers and to decrease the reliance on imported products.

Reforming Indonesia's import requirements

In recent years, the Government of Indonesia has often expressed its concerns over the surge of imported products, especially of products that can be manufactured domestically, which makes it difficult for products by micro, small, and medium enterprises (hereinafter, MSMEs) to compete. To increase the competitiveness of domestic products and to provide a level playing field for MSMEs, the Government has been imposing additional import requirements as a "*tool*" for addressing these issues. For instance, in 2021, Indonesia had imposed import restrictions on air conditioners by subjecting them to a "*Commodity Balance Mechanism*", which is a policy under which the Government would only issue import licences if domestic demand could not be met by domestic supply through *Minister of Trade Regulation No. 20 of 2021 on Import Policies and Regulations*. This requirement was later revoked by *Minister of Trade Regulation No. 36 of 2023 on Import Policies* (hereinafter, *MOT Regulation 36/2023*). *MOT Regulation 36/2023* serves as the "*umbrella*" regulation, providing key changes to import requirements for certain commodities, such as textile products, and aims at enhancing the supervision of goods entering Indonesia to ensure the stability of domestic production.

Developing the domestic electronic industry

MOI Regulation No. 6/2024 was issued as the derivative regulation of *MOT Regulation 36/2023* and is part of the Government of Indonesia's effort to increase the utilisation of domestic electronic products as capital goods, raw materials, and/or auxiliary materials for industrial purposes. The issuance of the Regulation is also a follow-up to the concerns voiced by Indonesia's President *Joko Widodo* regarding the trade balance deficit of electronic products in 2023. The Director for the Electronics and Telematics Industry within Indonesia's Ministry of Industry*, Priyadi Arie Nugroho,* noted that, in 2023, Indonesia's capacity to produce air conditioners amounted to 2.7 million units, but that the amount of realised production amounted to only 1.2 million units, which means that the production utilisation was only 43%. In the same year, Indonesia imported 3.8 million units of air conditioners. According to Director *Nugroho*, *MOI Regulation No. 6/2024* was "*a concrete effort from the government to create investment certainty for industrial players in Indonesia, especially in the context of producing electronic products domestically*". The Government also hopes that *MOI Regulation No. 6/2024* would incentivise foreign producers to start investing and building factories in Indonesia.

Addressing the increasing imports of electronic products

MOI Regulation No. 6/2024 details the electronic products under 139 tariff lines that are subject to the new import requirements. Notably, products falling under 78 of the tariff lines listed in the Appendix to *MOI Regulation No. 6/2024*, such as washing machines, are required to obtain

an import permit from the Minister of Trade. Products falling under the other 61 tariff lines, listed in the Appendix to *MOT Regulation 36/2023* and not listed in the Appendix to *MOI Regulation No. 6/2024,* such as machinery and laboratory equipment, require a "*Surveyor Report*". The concept of "*Surveyor Report*" refers to a report of verification or technical investigation by a Surveyor concerning the quantity and condition of the goods being traded.

To obtain an import permit, importers must first request a letter of *Technical Consideration* from Indonesia's Minister of Industry, which requires the submission of several documents and additional information, such as a business licence, as well as information on import realisation in the previous year and distribution plans. The *Technical Consideration* issued by the Minister of Industry will be valid for one year following its issuance. Importers are only allowed to utilise and/or distribute the imported products in line with the information submitted to the Ministry of Industry, which is intended to allow the Government to monitor imports and the domestic distribution and sale of imported goods.

According to Indonesia's Minister of Industry, *Agus Gumiwang*, before issuing the *Technical Consideration*, the Minister of Industry would assess the domestic capacity of producing the goods that are proposed to be imported and would not issue a *Technical Consideration* "*if the domestic industry is capable of supplying national needs*". More specifically, Article 9(2) of *MOI Regulation No. 6/2024* states that, in issuing the *Technical Consideration*, the Director General within the Ministry of Industry would assess: 1) The data submitted by businesses on the electronic products that they need to import; 2) The import realisation and/or production data provided by businesses; and 3) The national balance of supply and demand of electronic products.

Compliance with WTO rules?

Indonesia's recent policies to reduce imports for the benefit of domestic production are coming under increased scrutiny with respect to their compliance with international trade rules. While there are ways to support domestic industries and to apply safeguards to protect against sudden increases of imports, Indonesia's approach often appears to privilege trade-restrictive measures.

With respect to the new import license requirement for certain electronic products, the WTO *Agreement on Import Licensing Procedures* must be considered. The *Import Licensing Agreement* governs the administration of import licensing procedures and allows WTO Members to impose import licensing, as long as it is simple, transparent, predictable, and conforms with the relevant provisions of the *General Agreement on Tariffs and Trade 1994* (hereinafter, GATT 1994). While imposing import licensing is allowed under WTO rules, certain licensing regimes may be inconsistent with the applicable WTO rules. Notably, Article 3(2) of the *Import Licensing Agreement* provides that licensing must not have "*trade-restrictive or distortive effects on imports additional to those caused by the imposition of the restriction*" and Article XI:1 of the GATT 1994 states that no trade restrictions or prohibitions other than duties, taxes, or charges may be imposed by WTO Members, including through import licenses. Additionally, Article XI of the GATT 1994 states that restrictions, including through import licenses must "*not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions*".

In the case of *MOI Regulation No. 6/2024,* the Regulation's core and openly stated objective is to protect the domestic industry and the relevant ministries are allowed to reject import requests to favour the use of domestic products. Therefore, the Regulation appears to be intentionally "*discriminatory*" of imported goods and would arguably be declared inconsistent with the abovementioned WTO rules. In 2014, similar measures introduced by Indonesia were subject to WTO dispute settlement proceedings (*DS477*), following a request by New Zealand,with the WTO panel eventually finding them to be contrary to Article XI of the GATT 1994. At the time, New Zealand had requested consultations with Indonesia regarding the import licensing requirement for horticultural products and animals and animal products, which

only allowed imports depending on the "*sufficiency of domestic production to fulfil domestic demand*". New Zealand, as well as the US in the connected dispute *DS478*, had challenged the measure as a "*quantitative import restriction*", which is prohibited by Article XI:1 of the GATT 1994. The Panel found that Indonesia's import licensing regime constituted a "*prohibition on importation or restrictions having a limiting effect on importation*" and, therefore, had found it to be inconsistent with Article XI:1 of the GATT 1994.

Possible retaliation by trading partners?

Indonesia's previous measure to restrict the imports of air conditioners had led to various reactions from trading partners, such as from Japan, the Republic of Korea, and the EU. Notably, Japan conveyed its concerns through the *WTO Committee on Import Licensing*, stating that "*the imports of air conditioners continue to be hampered by the instability and unpredictability of the volume and timing of approvals, and the decreasing trend of approved volume compared to the applications*". Japan noted its concern that the measures "*constitute an import restriction having trade restrictive effects*" and called on Indonesia for "*the permit standards and procedures to be stipulated more transparently*". Considering that *MOI Regulation No. 6/2024* will also continue to restrict imports of electronics, including air conditioners, and to subject them to more restrictive trade measures, namely by requiring importers to obtain a *Technical Consideration*, it is likely that key trading partners exporting electronic products to Indonesia, such as Japan, Korea, and the EU would again voice similar concerns at the WTO. Importantly, the new import requirements could also have unintended effects on domestic producers, as they might have to procure certain components for their production domestically when such products fall under the new requirements.

To support the development of the local electronic industry, Indonesia could explore other measures that would be similarly effective and yet consistent with WTO rules. The Government of Indonesia could invest in research and development to foster innovation and improve the competitiveness of domestic manufacturers. Additionally, Indonesia could also look into lowering tariffs and addressing non-tariff measures to facilitate access to technologies necessary to improve the quality of domestic electronic components, allowing its industry to become more competitive domestically and on the global markets.

The additional requirements for import approval, namely the *Surveyor Reports* and *Technical Considerations*, involving various ministries, are poised to delay or prevent the importation of the covered products. Furthermore, if the application for a *Technical Consideration* is rejected by the Ministry of Industry, businesses would need to make sudden adjustments to their supply chains and find domestic suppliers. As *MOI Regulation No. 6/2024* only recently entered into force, it remains to be seen how this regulation would play out in practice and if it will indeed contribute to the development of Indonesia's domestic industry, or merely complicate or prevent imports of covered products, thereby triggering new challenges at the WTO, new economic disputes, and bilateral trade irritants.

Recently adopted EU legislation

Trade Law

- *Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020.*

- *Commission Delegated Regulation (EU) 2024/1173 of 13 March 2024 amending Delegated Regulation (EU) 2020/760 as regards some provisions following the free trade agreement between the European Union and New Zealand and deletion of obsolete provisions as regards export tariff quota for milk powder*

- *Commission Implementing Regulation (EU) 2024/1178 of 23 April 2024 amending Implementing Regulations (EU) 2020/761 and (EU) 2020/1988 as regards the creation, modification and management of certain tariff quotas following the free trade agreement between the European Union and New Zealand*

- *Commission Delegated Regulation (EU) 2024/1239 of 22 February 2024 amending Regulation (EU) 2018/196 of the European Parliament and of the Council on additional customs duties on imports of certain products originating in the United States of America*

- *Decision No 1/2024 of the Joint Committee established by the Agreement between the European Community and Canada on Trade in Wines and Spirit Drinks of 4 April 2024 amending Annexes I, III(a), III(b), IV(a) and VI to the Agreement between the European Community and Canada on Trade in Wines and Spirit Drinks [2024/1215]*

- *Council Decision (EU) 2024/1259 of 22 April 2024 on the position to be taken on behalf of the European Union within the International Grains Council concerning the accession of the Republic of Senegal to the Grains Trade Convention, 1995*

Trade Remedies

- *Commission Implementing Regulation (EU) 2024/1221 of 30 April 2024 amending Implementing Regulation (EU) 2023/265 imposing a definitive anti-dumping duty on imports of ceramic tiles originating in India and Türkiye*

- *Commission Implementing Regulation (EU) 2024/1223 of 30 April 2024 accepting a request for new exporting producer treatment with regard to the definitive anti-dumping measures imposed on imports of ceramic tiles originating in India and Türkiye and amending Implementing Regulation (EU) 2023/265*

Food Law

- *Commission Decision (EU) 2024/1225 of 30 April 2024 concerning national provisions notified by Denmark on the addition of nitrite to certain meat products (notified under document C(2024) 2669)*

- *Regulation (EU) 2024/1143 of the European Parliament and of the Council of 11 April 2024 on geographical indications for wine, spirit drinks and agricultural products, as well as traditional specialities guaranteed and optional quality terms for agricultural products, amending Regulations (EU) No 1308/2013, (EU) 2019/787 and (EU) 2019/1753 and repealing Regulation (EU) No 1151/2012*

- *Commission Delegated Regulation (EU) 2024/371 of 23 January 2024 supplementing Directive (EU) 2020/2184 of the European Parliament and of the Council by establishing harmonised specifications for the marking of products that come into contact with water intended for human consumption*

- *Commission Implementing Decision (EU) 2024/368 of 23 January 2024 laying down rules for the application of Directive (EU) 2020/2184 of the European Parliament and of the Council as regards the procedures and methods for testing and accepting final materials as used in products that come into contact with water intended for human consumption*

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