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## Third request for WTO dispute settlement consultations within one year – Canada under increasing pressure regarding its rules on the sale of wine

On 16 January 2018, the WTO published a request for consultations filed by Australia concerning measures maintained by the Canadian Government and the Canadian provinces of British Columbia, Ontario, Quebec and Nova Scotia governing the sale of wine. This is already the third request for consultations regarding Canadian rules on the sale of wine after the US had already filed two requests during the course of 2017 regarding measures maintained by the Canadian province of British Columbia on the sale of wine in grocery stores. The new request, going well beyond British Columbia, takes the case on the sale of wine in Canada to a new level. In addition to increased labelling requirements for alcoholic beverages (see *Trade Perspectives*, Issue No. 2 of 26 January 2018 below), countries around the world continue regulating the sale of alcoholic beverages, but must do so in compliance with international trade rules.

Since the end of Prohibition in the 1920's, trade in alcohol in Canada has been strictly regulated by the ten Canadian provinces. In particular, the distribution of alcohol is under the control of liquor control boards (hereinafter, LCBs), which, in general terms, are provincial marketing agencies that act as the Government's intermediaries between the producers/distributors and the consumers of alcoholic beverages. Related regulations cover all aspects of the alcohol market, from the production to retail mark-ups and warehouse fees. The LCBs previously maintained (and in some provinces, still do) a monopoly over the sale of beers and liquors (including wine) in retail outlets, hotels, bars and restaurants. In some provinces, LCB stores remain the only stores licensed to sell alcoholic beverages. Although liberalisation has been gaining momentum, Alberta remains the only province where all liquor stores are private. Other provinces are taking incremental steps in the same direction: Saskatchewan, for instance, has privatised half of its government stores and has permitted the opening of new private outlets. Those provinces are notably absent from the recent WTO complaints by Australia and the US.

Over the years, Canada's highly diverse regulation of the alcohol market has drawn complaints from many of its trading partners. Already in the mid-1980s, the European Communities had contested various measures under the General Agreement on Tariffs and Trade 1947 (hereinafter, GATT), including provincial LCBs' differential mark-ups on imported and domestic alcoholic beverages, origin-based discrimination in listing requirements, and the unavailability of certain retail points of sale to imported alcoholic beverages. The GATT panel found violations of Articles II:4 (*i.e.*, disciplines on importation monopolies) and XI:1 (*i.e.*, general elimination of quantitative restrictions), while it did not decide on the claims under Article III:4 (*i.e.*, discrimination of imported '*like*' products vis-à-vis domestic products).

Almost exactly a year ago, on 18 January 2017, the US had filed a request for WTO dispute settlement consultations on measures in British Columbia (see *Trade Perspectives*, Issue No. 2 of 27 January 2017). The contested measures restrict access to grocery store shelves only to 100% British Columbia-produced wine, while imported wine may only be sold in, what the measures refer to as, a '*store within a store*' (*i.e.*, a wine store that is located within a grocery store, but that is physically separate). The measures at issue in the current US request for WTO consultations resulted from a review of British Columbia's liquor policy, which took place in 2013 and was based on opinions and proposals for reform from local governments, the industry, and consumers. The prohibition on the sale of liquors, including wine, in urban grocery stores became the central issue of public comments during said review, with 75% of respondents speaking in favour of lifting the prohibition (British Columbia's rural grocery stores were already allowed to sell alcohol). The British Columbia Liquor Policy Review Report recommended permitting the sale of liquor in grocery stores subject to separating grocery products from liquor (to ensure safety and restrict minors' access to liquor) and maintaining the restriction on the total number of liquor-selling retail outlets. In addition, the Report explicitly stated that the new grocery model should highlight products from British Columbia and their manufacturers. On 1 April 2015, this recommendation was implemented in the form that the US challenged in 2017. The US claims that these retail sale requirements constituted less favourable treatment of imported *vis-à-vis* domestically produced wine and were, therefore, inconsistent with Article III:4 of the GATT 1994. In September 2017, the US filed a second complaint with the WTO, concerning the same issue, but referring to new versions of British Columbia's Liquor Control and Licensing Regulation (*i.e.*, B.C. Reg. 241/2016, effective 23 January 2017) and the '*Wine Store Terms and Conditions*', applicable in British Columbia and updated in August 2017.

The January 2018 request by Australia is much more comprehensive than the 2017 requests by the US. This is already evidenced by the scope of the request, addressing not only the Canadian province of British Columbia and its '*store within a store*' system, but also measures in the provinces of Ontario, Quebec and Nova Scotia. In its request, Australia summarises that, in those Canadian provinces, it appears "*that a range of distribution, licensing and sales measures such as product mark-ups, market access and listing policies, as well as duties and taxes on wine applied at the federal and provincial level may discriminate, either directly or indirectly, against imported wine*".

More specifically with respect to Ontario, Australia notes that the Ontario wine measures place conditions on both the sales of wine in grocery stores and its supply through the Liquor Control Board of Ontario (hereinafter, LCBO), a State Trading Enterprise. Australia asserts that the Ontario measures appear to favour products of Canadian origin and to potentially exclude or limit imported products from being displayed and sold. The request further notes that it appears as if the Ontario wine measures advantage Ontario wine by allowing Ontario wineries to directly deliver wines to licensed establishments in Ontario, on behalf of the LCBO, something that is not an option for foreign wine imports. With respect to Quebec's measures related to wine, Australia notes that they appear to provide Quebec's small-scale wine producers with direct access to grocery and convenience stores and to streamline access in favour of Canadian wine, while maintaining barriers for wine imports. Finally, with respect to the Nova Scotian measures, Australia asserts that they "*provide reduced product mark-up for local producers and preferences through supplier competitions and price bands*". In a long list of relevant legal and policy instruments, Australia lists applicable legislation from all concerned provinces, as well as Canadian Federal Acts.

In the case of the measures of British Columbia, Ontario and Quebec, the US (for British Columbia) and Australia (for all three provinces) assert the apparent discrimination maintained by the Canadian provinces by applying different rules on retail and distribution channels. The described measures supposedly favour provincial or Canadian wine, while disadvantaging wine from outside of the provinces and from outside Canada. The US and Australia especially claim a violation of Article III:4 of the GATT 1994 because the relevant provincial measures could be considered as laws, regulations, or requirements affecting the internal sale, offering for sale, purchase, or distribution of wine and fail to accord products imported into Canada treatment no less favourable than that accorded to '*like*' products of Canadian origin. To show a violation of Article III:4 of the GATT, the US and Canada have to demonstrate that the requirements modify the conditions of competition to the detriment of imported wine. Important parallels may be drawn to one of the central disputes in the relevant WTO '*case law*' (*i.e.*, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, hereinafter, *Korea – Beef*).

In *Korea – Beef*, complaint filed on 1 February 1999, the US and Australia had contested Korea's '*dual retail system*', which essentially required large retailers to sell imported beef separately from domestic beef, while small retailers were allowed to sell only one or the other, but not both. In its 2000 report, the WTO Appellate Body noted, in relevant part, that formal separation did not *per se* mean that imported beef was treated less favourably than domestic beef, because it did not necessarily change the conditions of competition to the disadvantage of imported beef. It furthermore refused to agree with the panel that, by *"limit[ing] the possibility for consumers to [visually] compare imported and domestic products"* and by *"encourag[ing] the perception that imported and domestic beef are different"*, the dual retail system necessarily created a competitive advantage for domestic beef. However, the cutting-off of imported beef from a large part of the retail channel, which resulted from a significant share of small retailers having decided, as a consequence of the adoption of the measure, to sell domestic meat only, led the Appellate Body to establish non-compliance with Article III:4 of the GATT. With respect to the measures in the Canadian provinces, a WTO panel would have to analyse the individual provinces' measures on a case-by-case basis. It can be expected that Australia and the US will seek to demonstrate that the different rules applicable to imported wine, as compared to domestic (*i.e.*, originating in the same province or in Canada) have an adverse effect on the competitive opportunities of imported wine, similar to that found by the Appellate Body in *Korea – Beef*.

Concerning the measures in all mentioned provinces, Australia claims the violation of a number of further GATT 1994 provisions. Australia considers the provincial measures to constitute internal taxes or other internal charges of any kind applied to products imported into Canada in excess of those applied to products of Canadian origin, so as to afford protection to products of Canadian origin, thereby violating Article III:1 and III:2 of the GATT 1994. Australia also considers the provincial liquor control boards/commissions of British Columbia, Ontario, Nova Scotia and Quebec, as State Trading Enterprises. Therefore, Australia claims non-compliance with Article XVII:1 of the GATT 1994, because the various liquor authorities were not acting in a manner consistent with the general principles of non-discriminatory treatment prescribed in the GATT 1994 for governmental measures affecting imports by private traders. Finally, Australia claims a violation of Article XXIV:12 of the GATT 1994, because Canada has not taken reasonable measures, as may be available to it, to ensure observance of the provisions of the GATT 1994 by the regional and local governments and authorities within its territories.

It must be noted that this is the very first dispute filed by Australia against Canada in the history of the WTO. Australia's Trade Minister Steven Ciobo dismissed claims that the complaint was related to Canada's unexpected last-minute reservations that stalled the renewed negotiations of the Trans-Pacific Partnership (hereinafter, TPP) Agreement in November 2017. Indeed, on 24 January 2018, Canada did agree on the final text of the TPP after a meeting in Tokyo that resolved the remaining challenges, such as Canada's insistence on the protection of its cultural industries. At the World Economic Forum in Davos, Canadian Prime Minister Justin Trudeau called the TPP Agreement the "*right deal*". Australia's Trade Minister rather underlined that Australia was aggrieved over Canada's domestic (wine) regulations. Trade statistics make the interest of Australia and the US in the Canadian wine market obvious. In terms of the current export volume, Canada is the fourth largest export destination for Australian wine and from Canada's perspective, Australia is the third most important origin of wine imports into Canada (61,002,300 litres in 2016). In terms of import value, the US leads the list of import origins (CAD 503,891,688), with Australia in fourth place (CAD 221,023,235). However, exports of bottled wine from Australia to Canada almost halved between 2007 and 2016, while exports to the UK and the US decreased even more. Despite increased wine exports to China and Hong Kong, Australian wine sales overall fell from USD 2.5 billion in 2007 to USD 1.7 billion in 2016, explaining the rationale behind seeking improved access to Canadian wine consumers. The EU closely follows the proceedings and already requested to join the consultations requested by the US.

Under WTO dispute settlement rules, Canada now has 60 days to settle the dispute with Australia. After that, Australia could request the establishment of a panel, with a view to force Canada and its provinces to change its laws, if found in breach of WTO obligations, or risk countermeasures. This case is poised to support the liberalisation trend observed within the Canadian alcoholic beverages market and may prompt Canada to reduce the barriers currently faced by importers. Producers, distributors, trade associations and wine producing countries should closely follow the proceedings at the WTO and participate, as actively and as far as possible, to the ensuing WTO dispute settlement cases.

## Towards increased labelling of alcoholic beverages? – Policy options for consumer information on alcoholic beverages in the EU and its Member States

Before 13 March 2018, the EU alcoholic beverages industry is committed to develop a self-regulatory proposal aimed at providing information on ingredients and nutrition of all alcoholic beverages and submit it to the European Commission (hereinafter, Commission). This pledge stems from the Commission's report of 13 March 2017 regarding the mandatory labelling of the list of ingredients and the nutrition declaration of alcoholic beverages under *Regulation (EU) No 1169/2011 on the provision of food information to consumers* (hereinafter, the FIR). Further policy options for consumer information on alcoholic beverages, including health warnings, are increasingly pursued in EU Member States.

The adoption of the FIR was the result of some intense debates over a number of contentious issues, including the labelling of alcoholic beverages. In the end, Article 16(4) of the FIR exempts alcoholic beverages containing more than 1.2% alcohol by volume (ABV) from displaying the mandatory list of ingredients (with the exception of ingredients, which may have an allergenic effect) and the nutrition declaration, which became mandatory for all foods, with few exceptions. However, as a compromise, in the negotiations of the FIR, the European Parliament requested that the Commission prepare a report addressing whether alcoholic beverages should in the future be covered, in particular, by the requirement to provide nutritional information, and the reasons justifying possible exemptions. The Commission published this report on 13 March 2017. The report, which was long-awaited and overdue, addresses five main points: 1) Whether there should be a list of ingredients for alcoholic beverages; 2) Whether a nutritional declaration for alcoholic beverages should be provided; 3) How the nutritional declaration should be presented to consumers (*i.e.*, per 100 ml or per serving size); 4) Whether such information could be provided on off-label information sources (*i.e.*, on the Internet); and 5) Whether '*alcopops*' should be defined for labelling purposes (for more information on these points, see *Trade Perspectives*, Issue No. 6 of 24 March 2017).

While the report concludes that objective grounds had not been identified that would justify the absence of information on ingredients and nutritional information on alcoholic beverages or a differentiated treatment for some alcoholic beverages, the Commission's report did not insist on mandatory labelling. However, the Commission noted that the alcoholic beverages sector appeared increasingly prepared to provide responses to consumers' expectations to know what they were buying and consuming. This was attributed to the expansion of concerted or individual voluntary initiatives. Therefore, the Commission granted the alcoholic beverages producers one year to deliver a self-regulatory proposal that would cover the entire sector of alcoholic beverages. A harmonised proposal on ingredients labelling and a nutrition declaration covering the whole sector, including spirits, beer and wine, is not a simple task. What should be clear is that, according to the FIR, voluntary information provided on or off label (*i.e.*, on the Internet) must still comply with the general rules of the FIR. The nutrition declaration can be limited to the energy value and it can also be expressed per serving (but only in addition to a declaration per 100ml). However, as spiritsEUROPE (*i.e.*, the representative body for the spirits industry at European level) notes, "*the devil is in the details*". While the average consumer may have an increased interest in the calories contained in their beverages of choice, spiritsEUROPE does not sense any significant increased demand for knowledge about the ingredients contained in the products. In addition, spiritsEUROPE argues that there was no value in showing calories per 100ml – such a reference would grossly misrepresent the calories present in an average glass, depending on the consumer's choice of spirit, beer or wine.

At the EU level, the alcoholic beverages industry, including the four different sectors (*i.e.*, cider, wine, beer and spirits) and its respective trade and industry associations welcomed, in March 2017, the publication of the Commission's report on the labelling of alcoholic beverages. However, the effectiveness of a self-regulatory approach on alcoholic beverages labelling has provoked intense discussions within the EU. While public health activists claim that the alcohol industry was given too much leeway to avoid regulation, the industry contends that self-regulation was the only way to address diverging national attitudes towards alcohol. In particular, makers of spirits and beer are exploring self-regulatory solutions to show consumers the ingredients contained in the alcoholic beverage they drink. However, some operators find the Commission's timeline too tight and are concerned that mandatory rules will eventually be imposed on them.

The Commission has, in an unusual step, left the '*ball*' (for now) in the '*camp*' of the alcoholic beverages industry to propose a harmonised self-regulatory approach. The Commission expects the different sectors of this industry to show the willingness to collaborate across sectors. The Commission notes, without specifying, that there were comparable initiatives of self-regulation by other industries that they should look into. The approach proposed by the sector could also provide additional evidence on consumers' understanding. It is now for the alcoholic beverages industry to come forward with a satisfactory, voluntary solution empowering consumers with the relevant information to take informed decisions on their purchases. The alcoholic beverages sector is engaged in a constructive dialogue to address the challenge put forward by the Commission, in full knowledge, reportedly after the first meetings, of the complexity of finding a common approach for the four different sectors and ancillary sectors such as retail, hotel and restauration. However, operators appear to fully embrace the responsibility being placed upon their sectors and are exploring the possibility to respond to consumers' and to the Commission's demands. Should the Commission consider the self-regulatory scheme proposed by the industry as unsatisfactory, it would launch an impact assessment to review further available options in line with the EU's Better Regulation principles. Such assessment should carefully consider the impact of different options on the internal market, on the economic sectors concerned, on consumers' needs, as well as on international trade.

The discussion on the provision of information on alcoholic beverages must be seen in the context of the developments within the World Health Organisation (hereinafter, WHO). At the regional level, the *WHO European Action Plan to reduce the harmful use of alcohol 2010-2020*, agreed upon by the WHO Regional Committee for Europe in 2011 through resolution EUR/RC61/R4, states that "*Product labelling similar to that used for foodstuffs, including* *alcohol and calorie content, additives, allergens, etc., can be introduced where possible*". But the discussions continuously evolve towards also adding warning messages on alcoholic beverages as another policy option. In July 2017, WHO Europe prepared a report entitled *Alcohol labelling - A discussion document on policy options*. As an option for action, WHO, in line with the European Action Plan, proposes that measures could be taken to introduce a series of warning labels or information labels on all alcoholic beverage containers, providing information both on ingredients and on the risks associated with alcohol consumption: damage to health (cirrhosis of the liver, cancers), risk of dependence, and dangers associated with drinking alcohol when pregnant, driving a vehicle, operating machinery and taking certain medications. WHO Europe's report states that health messages on labels could increase knowledge and encourage a change in perception of the risks associated with alcohol consumption. As public health professionals search for effective policies to address alcohol-related harm, the report claims that labels stood out as an underutilised way of empowering consumers to make healthy decisions about alcohol intake and that labelling provides a unique opportunity for governments to disseminate health messages at the point of sale and point of consumption. WHO Europe concludes that placing health information on alcoholic beverages and containers targets the appropriate audience (*i.e.*, the drinker) at the appropriate time (when purchasing and using the product).

At international level, at the 44th session of the Codex Committee on Food Labelling (hereinafter, CCFL) in Asunción, Paraguay, on 16 - 20 October 2017, the WHO introduced a *Discussion Paper on alcoholic beverage labelling*. The WHO highlighted, in its view, the unique potential of labelling to provide accurate information to consumers to protect their health at the points of sale and consumption, including information on alcohol content, caloric value, ingredients and health risks associated with alcohol consumption. According to WHO estimates, around two billion people used alcoholic beverages during the past 12 months, and around three million deaths annually are attributed to excessive alcohol consumption. Therefore, it was timely for Codex to initiate the process of developing, in a phased manner, guidance on alcoholic beverage labelling. While the CCFL expressed broad support for work on these items, some concerns were raised on the proposed work on alcoholic beverages labelling, namely that some of the points raised in the WHO discussion paper were outside the mandate of the CCFL, (*e.g.*, health warnings on labels). It was argued that these issues should be dealt with by national governments and should not be the subject of any future Codex work. It remains to be seen how the work on alcohol labelling in the CCFL progresses.

A considerable number of WTO Members is working on measures related to the regulation of alcoholic beverages, as reported in meetings of the WTO Committee on Technical Barriers to Trade (hereinafter, the TBT Committee). These measures relate to a variety of aspects, from labelling requirements to warning messages and content restrictions (for an initial assessment of such measures as to their compliance with international trade rules, see *Trade Perspectives*, Issue No. 21 of 18 November 2016). Finally, the WHO and the Organisation for Economic Co-operation and Development (OECD) also recommend the use of taxes as an effective tool and policy option to reduce alcohol-related harm.

At EU level, further policy options than ingredient and nutritional labelling are currently not being discussed. However, EU Member States discuss and introduce, *inter alia*, warning messages on alcoholic beverages. France was the first EU Member State to require that consumers be informed by means of warning messages about the dangers associated with drinking alcohol. Since 2007, it is mandatory for alcoholic beverages either to include the following message: "*consumption of alcoholic drinks during pregnancy, even in small amounts, may have serious consequences on the child's health*", or to use a pictogram. In Slovenia, labels of alcoholic beverages must include a warning that they are not suitable for children. In the UK, the industry has reached a voluntary agreement with the Government to display health warnings. The UK alcoholic beverages industry itself has launched campaigns to promote responsible drinking among students.

Most recently, on 19 January 2018, Ireland notified the Commission under the so-called TRIS (*i.e.*, Technical Regulation Information Service) procedure of a draft amendment to the Irish Public Health (Alcohol) Bill 2015, in so far as it relates to three additional specifications to labelling, advertising and broadcast watershed. Already, Section 12 of the Bill requires a warning that is intended to inform the public of the danger of alcohol consumption, as well as a warning that is intended to inform of the danger of alcohol consumption during pregnancies. The amendment to Section 12 of the Bill provides that labels on alcoholic beverages, websites where alcohol is sold online, and documents associated with kegs or casks (*i.e.*, barrels containing alcohol) must contain an additional cancer health warning. According to the draft, the text is "*a warning that is intended to inform the public of the direct link between alcohol and fatal cancers*". The '*standstill*' period under the TRIS procedure, until which other EU Member States may give an opinion on the draft Irish measure, ends on 30 April 2018. Most recently, on 26 January 2018, the UK Royal Society for Public Health (RSPH) published the report '*Labelling the Point*', which recommends a best practice alcohol labelling scheme that could help raise awareness and reduce harm. The proposed scheme includes: 1) Mandatory inclusion of the Government's low-risk drinking guidelines of no more than 14 units a week, potentially including an explicit cigarette-style warning of the link with health conditions such as bowel and breast cancer (It is also suggested that traffic light colour coding could help drinkers make use of unit information in the context of the guidelines); 2) A don't drink and drive warning on the front label; and 3) Calorie content per container or per serving on the front label.

Interested parties should closely monitor any developments in order to ensure that their legitimate interests are duly taken into account and safeguarded. The upcoming initiatives in the EU on the labelling of alcoholic beverages should be monitored and stakeholders should continue to participate in this self-regulatory exercise in order to shape potentially future EU legislation by interacting with relevant EU Institutions, trade associations and affected stakeholders. In addition, developments in EU Member States (such as recently in Ireland) implementing WHO initiatives including health warnings on alcoholic beverages may indicate that measures, such as those adopted in the tobacco sector, could in the future have to be implemented, going much beyond displaying the ingredient labelling and the nutrition declaration.

## The impact of the European Union's preferential trading schemes for developing economies

On 19 January 2018, the European Commission (hereinafter, Commission) published its *Report on the Generalised Scheme of Preferences covering the period 2016-2017* (hereinafter, GSP Report). The GSP report points out the progress made by the beneficiary countries and stresses the relevant areas where improvement is still needed. Additionally, the GSP Report is accompanied by a separate document, which provides a detailed overview of progress and remaining shortcomings of the nine beneficiary countries (*i.e.*, Armenia, Bolivia, Cabo Verde, Kyrgyzstan, Mongolia, Pakistan, Paraguay, the Philippines, and Sri Lanka) of the Special Incentive Arrangement for Sustainable Development and Good Governance (hereinafter, '*GSP+*'). The report shows improvements regarding the economic benefits of the schemes, which provide important preferential access to the EU market. It also notes that efforts are still required on certain areas to reduce poverty, promote sustainable development, human rights and good governance. Beneficiary countries and countries that aim at becoming GSP or GSP+ beneficiaries must continue their efforts to comply with the schemes and be able to support their businesses in their export endeavours to the EU.

The EU's GSP is a system of unilateral trade concessions that reduces or eliminates tariffs on a wide range of exports from developing and least-developed countries, focussing solely on granting tariff preferences for trade in goods. The GSP is used to increase export revenues in developing countries in order to reduce poverty and promote sustainable development and good governance. Such special treatment supporting developing and least-developed countries is today explicitly authorised by world trade law. Initially, a waiver from the provision on most-favoured nation (MFN) treatment contained in Article I of the General Agreement on Tariff and Trade (hereinafter, GATT) was granted in 1971, in order to permit developed countries to establish unilateral trade preferences for developing countries (see *Trade Perspectives*, Issue No. 9 of 6 May 2011). These preferences were later explicitly permitted by GATT signatories in Paragraph 2(a) of the Decision of 28 November 1979, known as the '*Enabling Clause*'. The Enabling Clause was incorporated into WTO law as part of the GATT 1994.

The EU's GSP has been in place since 1971, although it has periodically been subject to reviews of varying depth and extent. On 31 October 2012, the EU adopted its most recent iteration of the GSP scheme through *Regulation (EU) No 978/2012* (hereinafter, GSP Regulation) (see *Trade Perspectives*, Issue No. 21 of 16 November 2012), which applies since 1 January 2014. The architecture of the scheme has undergone significant changes over time. As the EU's GSP reports generally cover a period of two calendar years, the GSP report published in January 2018 is only the second report since the reformed EU's GSP scheme entered into force in 2014. The EU's GSP, in its current form, encompasses three types of preferential arrangements: 1) The '*General GSP*' (*i.e.*, the general arrangement for developing countries matching certain eligibility criteria); 2) '*GSP+*' (*i.e.*, a special incentive arrangement for sustainable development and good governance); and 3) The '*Everything but Arms*' arrangement (*i.e.*, a special arrangement for least-developed countries, known as EBA). Currently, the EU's GSP arrangements cover 17 '*General GSP*' beneficiaries, nine countries benefitting from '*GSP+*' and 49 countries listed by the United Nations (hereinafter, UN) as least-developed countries (hereinafter, LDCs) and benefitting from the EBA arrangement. The EU's 2018 GSP report provides trade statistics with regard to the various schemes' beneficiary countries. In 2016, products worth EUR 62.2 billion entered into the EU under the GSP preferences. This figure includes products worth EUR 31.6 billion from the '*General GSP*' beneficiary countries, products worth around EUR 7.5 billion from the '*GSP+*' beneficiaries, and products worth EUR 23.5 billion from EBA beneficiaries. The three major '*General GSP*' beneficiaries of preferential imports to the EU in 2016 were India (EUR 16.6 billion), Viet Nam (EUR 7.1 billion) and Indonesia (EUR 5.2 billion).

Article 4(1) of the GSP Regulation provides that a country eligible for GSP preferences shall benefit from them unless: 1) It has been classified by the World Bank as a high-income or an upper-middle income country during three consecutive years, immediately preceding the update of the list of beneficiary countries; or 2) It benefits from another preferential market access arrangement with the EU for substantially all trade. The decision to remove a beneficiary country from the list of GSP beneficiary countries only applies one year after such decision entered into force for countries classified by the World Bank as upper-middle or higher income countries, or two years after the date of entry into force of such decision for countries benefiting from another preferential market access. During the period from 2016 to 2017, five countries lost their GSP status. Cameroon and Ukraine now access the EU market through preferential trade agreements. Fiji, Iraq and the Marshall Islands were classified by the World Bank as upper-middle income countries, or above, for three consecutive years. Therefore, they do not fulfil the GSP criteria anymore. On 1 January 2019, Cote d'Ivoire, Ghana and Swaziland will also cease to benefit from the GSP scheme, as their preferential market access arrangements with the EU entered into force in 2016.

The list of products covered by the '*General GSP*' is reviewed every three years. In this regard, the GSP report notes that the most recent review in 2016 led to a revised list of products that no longer required the support of GSP preferences. According to the GSP Regulation, the tariff preferences are to be suspended with respect to products of a GSP section originating in a GSP beneficiary country when the average value of EU imports of such products, over three consecutive years from that GSP beneficiary country, exceeds certain thresholds listed in an annex of the GSP Regulation. Therefore, a number of important products, such as mineral products, textiles, inorganic and organic chemicals, pearls and precious metals, motor vehicles, bicycles, aircraft and spacecraft, ships and boats, and iron (and steel) articles from India, as well as live animals and animal products excluding fish, animal or vegetable oils, fats and waxes from Indonesia, and live plants and floricultural products from Kenya, were removed from the product list. The revised list entered into force on 1 January 2017.

Regarding EBA beneficiaries, the three major beneficiaries of preferential imports to the EU in 2016 were Bangladesh exporting products worth EUR 15.6 billion, Cambodia (exports worth EUR 4.2 billion), and Mozambique (exports worth) EUR 1 billion. The EU intensified the dialogue with some EBA beneficiaries, where serious improvements on fundamental human and labour rights were needed. In the case of Myanmar, the EU urged the Government of Myanmar to find a long-term solution to the structural issue in the State of Rakhine, in line with its international commitments and in respect of core labour standards and human rights. If dialogue were to fail to produce results, the EU could temporarily withdraw EBA preferences in exceptional circumstances, notably in cases of serious and systematic human and labour rights violations listed in the GSP Regulation. As all LDCs are supposed to benefit from the EBA scheme, the UN's list of LDCs is the key indicator. The latest update to the UN's LDC list removed Samoa and Equatorial Guinea from it. Therefore, they are no longer eligible as EBA beneficiaries. Equatorial Guinea has also been classified by the World Bank as a high-income country in 2015 and as an upper-middle-income country in 2016 and 2017. Therefore, Equatorial Guinea no longer fulfils the criteria to benefit from any GSP arrangement. On the other hand, while Samoa graduated from the LDC status on 1 January 2014, it has been classified by the World Bank as a lower-middle income country in 2016 and as an upper-middle income country only in 2017. Therefore, Samoa, which will be removed from the EBA list as of 1 January 2019, is, for now, still eligible as a beneficiary of the GSP scheme, so long as it complies with the relevant conditions.

Compared to the first report of 2016, the country-specific analyses of the effects of the '*GSP+*' show progress within the 10 beneficiary countries as regards the effective implementation of the 27 international conventions relevant to obtain and maintain GSP+ status. The EU regularly sends monitoring missions to the '*GSP+*' beneficiary countries in order to evaluate their compliance with the 27 core international conventions and to continue the dialogue with the beneficiary countries. The three major '*GSP+*' beneficiaries of preferential imports to the EU in 2016 were Pakistan, exporting products worth EUR 5.5 billion, the Philippines, exports worth EUR 1.7 billion, and Armenia, exports worth EUR 1.1 billion. On 1 January 2017, Georgia ceased to benefit from the '*GSP+*' scheme, as it obtained preferential market access under the Deep and Comprehensive Trade Agreement (DCFTA) with the EU. In May 2017, Sri Lanka re-entered the '*GSP+*' scheme, after it had been removed in 2010 (see *Trade Perspectives*, Issue No. 11 of 2 June 2017). From 1 January 2019, Paraguay will no longer be a GSP+ beneficiary, as it has been classified by the World Bank as an upper-middle income country for three consecutive years. The GSP Report notes that there have been important improvements in the 10 GSP+ beneficiary countries, such as initiatives to improve the domestic legal framework and the adoption of new legislation in specific areas, including human rights and environmental law. However, the EU considers that significant improvements are still needed in order for beneficiaries to demonstrate full compliance with their '*GSP+*' commitments and to guarantee sustainable economic growth.

The EU's GSP schemes aim at engaging beneficiary countries in a process to improve their political and economic situation. This is done through unilateral trade preferences, but, in the case of 'GSP+' also through the relevant international conventions and regular monitoring and dialogue. There are a number of stages for potential and current GSP beneficiaries. Firstly, prior to benefitting from '*GSP+*', eligible countries must ratify and effectively implement the listed international conventions. Secondly, once listed, countries must support their economic operators in their quest to benefit from the enhanced market access to the EU. Economic operators in all beneficiary countries, and in all relevant sectors, must also be aware of other relevant EU legislation, particularly with respect to consumer and environmental protection. For a wide range of products, notably agro-food products, but also textiles, machinery, consumer electronics, and pharmaceuticals, detailed technical regulations and labelling requirements must be applied and respected. Companies and relevant stakeholders should be aware of any sector-specific legislation, so as to avoid administrative conflicts when exporting to the EU. Exporters must be prepared in order to avoid time-consuming and costly conflicts with EU and EU Member States' authorities in cases of non-compliance. Thirdly and finally, the EU's GSP scheme should be seen as an incentive to diversify economies in order to fully benefit from the wide range of preferential market access into the EU. For example, the country-specific analysis report shows that the key risk factor for Mongolia's economy remains its lack of diversification of its economic sectors. Mongolia depends on a few important export and import markets (namely China and Russia) and the dominance of minerals exports. In order to improve its capacity to obtain the full trade benefits of the GSP+, Mongolia should aim at diversifying its market, in particular considering its substantial potential in agriculture and tourism. '*GSP+*' preferences can be an important incentive to diversify economies.

While the EU underlines the success of the GSP schemes and the generous EU market access, non-governmental organisations criticise the lack of effective implementation and claim that human rights violations continued in a number of GSP+ countries. The GSP report does indeed show progress and improvements, but beneficiary countries must continue their efforts in order to enable economic operators to benefit from their enhanced access to the EU market. All beneficiaries of the various GSP schemes should continue working on their reform programs and the effective implementation of relevant laws and regulations. Only this will allow economic operators to fully benefit and contribute to the sustainable economic growth of their country and to create the proper environment to attract trade and investment.

## Recently Adopted EU Legislation

### Market Access

- *Commission Implementing Regulation (EU) 2018/83 of 19 January 2018 amending Annex I to Regulation (EU) No 605/2010 as regards the list of third countries or parts thereof from which the introduction into the European Union of consignments of raw milk, dairy products, colostrum and colostrum-based products is authorised*

- *Commission Implementing Decision (EU) 2018/85 of 18 January 2018 amending Implementing Decision (EU) 2016/715 setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and the spread within the Union of the harmful organism Phyllosticta citricarpa (McAlpine) Van der Aa*

### Customs Law

- *Commission Delegated Regulation (EU) 2018/94 of 16 November 2017 fixing a flat-rate reduction for the import duty for sorghum in Spain imported from third countries*

- *Commission Implementing Regulation (EU) 2018/82 of 19 January 2018 correcting Regulation (EC) No 891/2009 opening and providing for the administration of certain Community tariff quotas in the sugar sector*

## Food and Agricultural Law

- *Commission Regulation (EU) 2018/97 of 22 January 2018 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the use of sweeteners in fine bakery wares*

- *Commission Regulation (EU) 2018/79 of 18 January 2018 amending Regulation (EU) No 10/2011 on plastic materials and articles intended to come into contact with food*

## Other

- *Commission Implementing Regulation (EU) 2018/108 of 23 January 2018 on an emergency measure in the form of aid to farmers due to the floods and heavy rainfalls in certain areas of Lithuania, Latvia, Estonia and Finland*

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