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The European Commission recommended to the Council to open negotiations with the US to settle the longstanding dispute on US beef exports

On 3 September 2018, the European Commission (hereinafter, Commission) announced that it had decided to request a mandate from the Council of the EU (hereinafter, Council) to discuss with the US "*the review of the functioning of an existing quota to import hormone-free beef into the European Union*". This follows up on the meeting between the President of the European Commission Mr. Jean-Claude Juncker and US President Donald Trump on 25 July 2018 (see *Trade Perspectives,* Issue No. 15 of 27 July 2018), where both sides committed to address a number of specific trade issues, but also to "*launch a close dialogue on standards in order to ease trade, reduce bureaucratic obstacles, and slash costs*". According to the Commission, it is in this spirit that it now intends to address this issue with the US. The Commission aims at finding a technical solution for increasing the quotas allocated to the US, which would not affect the EU's ban on hormones-treated beef.

The EU and the US have been disputing EU measures concerning meat and meat products since the 1980s. In 1981, the EU adopted restrictions on the use of hormones in livestock production. In advance of the implementation of the EU's restrictions in 1989, the US invoked dispute settlement procedures under the General Agreement on Tariffs and Trade (hereinafter, GATT) in 1986. The dispute resulted in retaliatory tariffs by the US against EU imports until 1996. Following the establishment of the WTO, the US continued to challenge the EU's measures. A series of WTO dispute settlement procedures and decisions ensued from 1996 to 2009. On 12 July 1999, a WTO arbitrator authorised the US to impose retaliatory tariffs of USD 116.8 million per year on the EU. Most recently, in October 2008, the WTO Appellate Body circulated a Report authorising continued trade sanctions by the US against the EU (on the basis of a July 1999 decision by the EU, and amounting to USD 116.8 million per year), but reversed the underlying panel's findings that the EU prohibition violated its WTO obligations.

Since 1989, as modified in 2003, the EU prohibits the production or importation of meat and meat products produced from animals to which *estradiol-17β*, *testosterone*, *progesterone*, *zeranol*, *trenbolone acetate* or *melengestrol acetate* have been administered. All six of said hormones are approved for use in the US and approximately two-thirds of US cattle is believed to be treated with growth hormones, but this number rises to almost 100% on commercial feedlots in the US. Cattle producers use hormones to produce larger livestock in less time, to decrease the amount of feed and other inputs needed, and to produce leaner

carcasses, thereby increasing efficiency and reducing the costs of production. Other countries that have approved the use of hormones in cattle production include, *inter alia*, Australia, Canada, Chile, Japan, Mexico, New Zealand and South Africa.

As a result of the WTO decision in 1999, the Office of the United States Trade Representative (hereinafter, USTR) announced a list of products that were subject to a 100% *ad valorem* rate of duty, a list that was later modified in January 2009. However, the implementation of the modified list was delayed while the EU and the US negotiated a settlement to the dispute, which was announced in May 2009. The settlement consisted of a *Memorandum of Understanding* (hereinafter, MoU) whereby the EU would phase-in market access for specially-produced so-called High Quality Beef (*i.e.*, growth-hormone-free beef, hereinafter abbreviated as HQB) through a dedicated tariff-rate quota (hereinafter, TRQ). The US, in turn, agreed to phase-out the retaliatory tariff duties on EU products, which were fully eliminated in May 2011. Phase 1 of the MoU set the HQB TRQ at 20,000 metric tonnes (hereinafter, MT), while Phase 2 and Phase 3 of the MoU increased the HQB TRQ to 45,000 MT. The MoU between the EU and the US was notified to the WTO Dispute Settlement Body on 14 April 2014 as a mutually agreed solution to implement the report in the dispute settlement proceedings. The MoU between the EU and the US was adopted in parallel to a related MoU between Canada and the EU, offered by the EU as a settlement to the corresponding WTO dispute brought by Canada on the same issues. The Canada-EU MoU increased the HQB TRQ by 1,500 MT in Phase 1, and by another 1,700 MT in Phase 2. As a result, the current HQB TRQ amounts to a total of 48,200 MT.

It appears that the MoUs were intended to provide '*compensatory concessions*' only to the US and Canada. The '*technical trick*' used by the EU had been to open TRQs on the basis of a definition of HQB that would be '*de jure*' available to all (*i.e.*, MFN compliant on its face), but '*de facto*' available only to the US and Canada (*i.e.*, discriminatory in favour of the two countries that the EU had to '*compensate*' as a consequence of WTO litigation). In fact, when the original MoUs were agreed, the type of beef falling within the scope of the HQB TRQ was only (or primarily) produced in Canada and the US. Specifically, "*beef cuts obtained from carcasses of heifers and steers less than 30 months of age which have only been fed a diet, for at least 100 days before slaughter, containing not less than 62% of concentrates and/or feed grain co-products on a dietary dry matter basis*" (accordingly, the relevant TRQ is sometimes referred to as the high-quality grain-fed beef quota).

This '*technical trick*' worked well for a while. No third country challenged the scheme at the WTO as '*de facto*' discriminatory and the strategy by the EU, Canada and the US was that their bilateral free trade agreements (hereinafter, FTAs) would come into force soon enough to allow the '*re-packaging*' of the '*compensatory concessions'* under those preferential instruments, before other WTO Members could challenge them or start benefitting from them, and, thereby, eroding the Canadian and US preferences. Indeed, the Comprehensive Economic and Trade Agreement (hereinafter CETA) between Canada and the EU, most of which is provisionally applied since 21 September 2017, includes a TRQ on '*fresh or chilled beef and veal*' that increases from 5,140 to 30,840 MT over six years and that reportedly absorbs Canada's portion of the HQB TRQ. However, over time, beef producers in non-North American countries modified their operations to take advantage of this duty-free access to the EU market. Over the last few years, the HQB TRQ, which is administered on a '*first come, first serve*' basis, has been filled with increasing shipments of HQB from Argentina and Australia, who strived to meet the HQB requirements, with the US' shares of the quota continuing to decline. In fact, in 2017, only slightly above 16,000 metric tonnes of fresh beef meat were imported from the US to the EU.

Reportedly, the US has unsuccessfully attempted to negotiate an increase to the TRQ with the EU in the framework of the negotiations of the Transatlantic Trade and Investment Partnership (hereinafter, TTIP), which stalled in the Autumn of 2016 in the context of the US presidential campaign and the election of Donald Trump. Considering the fate of TTIP negotiations in 2016, it appears that the US beef industry decided that more aggressive action was required and, on 9 December 2016, requested the US Government to reinstate

retaliatory tariff measures against EU imports. In particular, the US beef industry believes that the MoU between the EU and the US no longer adequately benefits the US beef industry, in particular because of the increasing use of the HQB TRQ by a number of other countries, which were originally '*not intended*' to be the *de facto* beneficiaries of the scheme. More generally and in legal terms, the action appears to originate from a push by the US to increase the enforcement of the US Trade Act of 1974 using the Trade Facilitation and Trade Enforcement Act of 2015. According to the USTR, "*[t]he EU has failed to live up to its assurances on this issue*". A USTR press release added that the settlement had *"not worked as intended*". Reports indicate that the US beef industry contends that, although the HQB TRQ has remained in place, the agreement had not sufficiently compensated the economic harm resulting in the ban on US beef and beef products.

In December 2016, the US Government did initiate proceedings to reinstate retaliatory tariff measures against EU imports and, on 15 February 2017, the USTR held a public hearing on the modification of the list of products subject to retaliatory tariff duties. The language used implied that action would be taken in the near future, and that the USTR was interested in modifying the list of goods subject to retaliation (see *Trade Perspectives*, Issue No. 1 of 13 January 2017). Following the opening of the procedure by the US to reinstate increased duties on certain EU products in December 2016, the EU and the US conducted consultations regarding the operation of the revised MoU, as referred to in Article IV of the MoU.

In 2018, trade-related tensions between the EU and the US increased in light of the imposition of additional duties on steel and aluminium imports. Under the threat of additional duties on auto imports from the EU, on 25 July 2018, the President of the European Commission, Jean-Claude Juncker, and US President Trump held a meeting in Washington and reached a political agreement: 1) To work together towards zero tariffs, zero non-tariff barriers, and zero subsidies on non-auto industrial goods; 2) To strengthen strategic cooperation with respect to energy, increasing EU imports of liquified natural gas (LNG) from the US; 3) To launch a close dialogue on standards in order to ease trade, reduce bureaucratic obstacles, and reduce costs; and 4) To work closely together with like-minded partners to reform the WTO. In addition, the EU and the US also agreed to work together to reduce barriers and increase trade in services, chemicals, pharmaceuticals, medical products, as well as soybeans.

This new initiative on US beef exports must be seen in this light and the Commission specifically notes that it was "*committed to deliver on the letter and the spirit of the Joint Statement agreed on 25 July by Presidents Juncker and Trump to launch a new phase in the trade relationship*" between the EU and the US. More specifically, Phil Hogan, the European Commissioner for Agriculture and Rural Development, stated that "*the already existing beef quota under the Memorandum of Understanding will remain at exactly the same level*" and, intending to reassure EU consumers, that "*the said quota will continue to cover only products complying with Europe's high food safety and health standards, in this case only non-hormone treated beef*". Rather, the Commission notes that it suggests "*to allocate to the United States a part of the existing quota that is also available to exporters from other countries*" by identifying "*a WTO-consistent and mutually agreed possible way forward, based on the country-allocation of the existing quota*". Reportedly, the Commission intends to split up the current TRQ, allocating half of it to the US and the other half to all other supplying countries. In this context, the Commission's recommendation for a Council Decision notes that "*Negotiations with other supplying countries may be needed to ensure that any agreed country allocation of the said tariff rate quota with the United States respects their existing rights under the WTO/GATT Agreements*". Indeed, during a public consultation organised by the EU between 27 March and 24 April 2018, the Australian and Uruguayan Government requested to participate in the negotiations in accordance with WTO law.

In view of the often wide gap between the in-quota and the out-quota tariff rates, the TRQ allocation is of key importance. The question of whether TRQs are administered on a country-specific or MFN basis is one of the most important and often contentious issues

associated with the opening and management of TRQs. Country-specific TRQs are not necessarily inconsistent with WTO rules, as Article XIII:2(d) of the GATT 1994 expressly allows quotas to be allocated among supplying countries, which in practice means the exclusion of other WTO Members because not all Members can normally be considered supplying countries. However, in accordance with Article XIII:2 of the GATT 1994, the core requirement with respect to the allocation of TRQs is to "*aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions*". The preferred way of allocating TRQs under Article XIII of the GATT 1994 is to do so on the basis of agreement among all WTO Members that have a substantial interest in supplying the product. If that is not practical, the unilateral decision of the importing country may suffice. In this latter case, however, the importing country is required to allocate the TRQs "*based upon the proportions, supplied by such contracting parties during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product*". The EU will likely face difficult negotiations and possible WTO dispute settlement vis-à-vis third beef-supplying countries.

As Australia, Argentina, and Uruguay already requested participation in the negotiations, it can be expected that EU trading partners will pay close attention to the negotiations between the EU and the US and that any final agreement will prove controversial and likely come under WTO scrutiny. Interested parties should closely monitor the new developments concerning this long-standing dispute.

Is the EU heading towards mandatory nutrition labelling for alcoholic beverages?

In September 2018, a spokesperson for the European Commission (hereinafter, Commission) stated that the *Joint self-regulatory proposal from the European alcoholic beverages sectors on the provision of nutrition and ingredients listing* (hereinafter, the joint proposal) to the Commission of 12 March 2018 had "*some legal issues*" and did "*not satisfy the need to fully inform EU consumers*". The Commission was thereby hinting at the eventual regulation of mandatory nutrition labelling for alcoholic beverages, which the alcoholic beverages industry has so far sought to avoid.

The Commission's spokesperson reportedly noted that "*Health and Food Safety Commissioner Vytenis Andriukaitis is not satisfied with the proposal because it is not consistent and does not address some issues related to information for consumers: EU consumers should be presented the full information of the products they purchase*". Finally, the spokesperson added that "*the Commission's lawyers' assessment confirms that there are some legal issues with the proposal*", evidently referring to *Regulation (EU) No 1169/2011 on the provision of food information to consumers* (hereinafter, FIR), which requires food business operators to present full information to consumers.

In the process of adopting the FIR, harmonised requirements for the labelling of alcoholic beverages could not be agreed on. Article 16(4) of the FIR, therefore, exempts alcoholic beverages containing more than 1.2% alcohol by volume (hereinafter, ABV) from displaying the mandatory list of ingredients (with the exception of ingredients that may have an allergenic effect) and the nutrition declaration, which became mandatory for all foods, with few exceptions. However, as a compromise, during the inter-institutional 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 the mandatory labelling of the list of ingredients and the nutrition declaration of alcoholic beverages on 13 March 2017. The key issues in the report included: 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); and 4) Whether such information could be provided on off-label information sources, such as on the Internet (see *Trade Perspectives*, Issue No. 6 of 24 March 2017).

While the Commission's 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, it did not insist on mandatory labelling. At that time, 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 one year to the alcoholic beverages sector for it to deliver a self-regulatory proposal that would cover the entire sector of alcoholic beverages. On 12 March 2018, this proposal was submitted by the alcoholic beverages sector and includes four sector specific annexes: 1) The spirits sector annex; 2) The detailed wine and aromatised wine products annex; 3) The European brewers' commitment to listing ingredients and nutrition information; and 4) The European cider and fruit wine association annex. The representative associations of the European wine, aromatised wine, spirits, beer and cider sectors stated in their joint press release of 12 March 2018 that they had "*responsibly developed a meaningful and adapted voluntary solution to address consumer expectations about ingredients listing and nutritional information*" and that the sectors had "*worked constructively together since the publication on 13 March 2017 of the Commission report, to put forward a joint proposal to provide consumers with meaningful, clear and easy to understand information on these aspects*".

The sectors' objective is to improve consumer knowledge about the different products and to empower them to make informed decisions about the products that they choose to consume, within a balanced lifestyle. The key elements of the joint proposal are as follows: 1) The nutritional information and the list of ingredients of the products will be provided (in tailor-made and meaningful ways); 2) The nutritional information and the list of ingredients will be given to consumers off-label and/or on-label. Off-label information will be easily accessible from the label itself; 3) Traditional and/or innovative tools (for providing access to information) will be used and comprehensive modern information systems could be developed; and 4) Food business operators responsible for food information will decide how to display the information. The four sector-specific annexes (under the sole responsibility of each sector) for beer, cider, spirits and wine concretely address the process and modalities for implementing the joint proposal for each sector (regarding the reactions from public health non-governmental organisations (NGOs) and the discussion to provide more information for consumers online and off-label, see *Trade Perspectives*, Issue No. 6 of 23 March 2018).

Importantly, in the joint proposal, the industry did not find agreement on the long-standing dispute over how to inform consumers about the number of calories (or energy) contained in alcoholic beverages and this may be a reason for the Commission's recently voiced concerns. This information is perhaps the most important element for many consumers. However, it appears that the legally required declaration '*per 100ml*' of the FIR is not suitable for most alcoholic beverages. Regarding the Commission's expressed dissatisfaction with the joint proposal, *spiritsEUROPE* reportedly commented on 18 September 2018, indicating that: "*We do understand and accept the legal obligation to label information on calories per 100ml, even if it is inappropriate and potentially misleading in the case of spirits. This is why we believe all alcoholic beverages should be obliged to label calories both per 100ml and per portion. It's the only way we can ensure consumers can actually make realistic comparative assessments on typical calorie intake values between the different categories*". For spirits, *spiritsEUROPE* members had committed, in the sector-specific annex, to providing nutrition and ingredient listing by the end of 2022. *spiritsEUROPE* suggests that providing nutrition and ingredient listing would be done either on- or off-label. It is expected that some companies, in particular SMEs, may opt for the off-label solution. Other companies might choose on-label information, in addition to the information being available online (off-label). Energy information will always be provided per portion (or single serve container) and, as

required, per 100 ml. When using online platforms, members of *spiritsEUROPE* reportedly intend to go beyond the requirements of the FIR and will provide full nutrition information for all spirits and a list of ingredients, as well as the legal definition of every category giving consumers details of the raw materials and the production process.

As the FIR currently stands, spirits producers that wish to voluntarily provide nutrition information on labels must do so per 100ml, which represents more than three standard servings of spirits and might contradict responsible drinking messages. This has been, and remains, a barrier for many operators when choosing where and how to display this information. This is why *spiritsEUROPE* invited the Commission to consider: 1) Allowing energy per serving to be mentioned more prominently than the 100ml on spirits labels; and 2) Requiring for all alcoholic beverages, not usually consumed per 100ml, the mention of energy per serving (or single serve container). Spirits, for example, are the least calorific alcoholic beverage and a nutrition declaration per 100ml would, in fact, present somehow misleading information because spirits are typically consumed in much smaller quantities. Spirits and beers are generally not served in 100ml portions. Per 100ml, spirits (40% ABV) have around 224 calories. In contrast, wine (12% ABV) has around 74 calories and beer (5% ABV) 43 calories. However, due to the typically smaller serving size, based on the alcohol content, spirits have 67 calories per serving size recognisable to consumers, while wine has 74 and beer has 106. Therefore, a typical serving size of beer has more calories than a serving size of spirit or wine. According to the Commission's Guidance for alcohol consumption, the most common measurement used for national low risk/sensible drinking guidelines in EU Member States is a '*standard unit*' of 10-12g alcohol. A '*standard unit*' of 10-12g alcohol corresponds to comparable serving sizes of 30ml of spirit, 100ml of wine and 250ml of beer. Perhaps, in addition to the mandatory indication of the energy by 100ml, the calorific value of a '*unit*' of 10-12g alcohol in the specific drink could be indicated in the nutrition declaration (without calling it '*serving size*', a term which appears to be a stumbling block in the ongoing discussion).

Arguably, for producers that wish to provide the information on-label, the requirement to do so per 100ml (even if the serving size can also be given) might act as a deterrent because they do not wish to provide misleading information, or information that contradicts responsible drinking messages. Spirits are usually served in 30ml servings. In Germany, the typical glass with 20ml of *Korn* (*i.e.*, a German colourless distilled beverage produced from fermented cereal grain seed) constitutes an even smaller serving size. There are, in fact, few foods that are consumed in similar doses as those for spirit drinks. Under the FIR's predecessor, *Council Directive 90/496/EEC of 24 September 1990 on nutrition labelling for foodstuffs*, Article 6(2) mandated that (if voluntarily provided) "*Information shall be expressed per 100g or per 100ml. In addition, this information may be given per serving as quantified on the label or per portion, provided that the number of portions contained in the package is stated*". Indicating the number of portions was deemed important in the context of giving nutritional information per serving, in addition to the indication per 100g or per 100ml. There appears to be no reason why nutritional information per serving or unit could not be indicated more prominently, if producers so wish.

Despite the recent comments by the Commission's spokesperson, the Commission is currently still in the formal process of reviewing the industry's joint proposal. Asked if the Commission would have the time to deal with the issue before the end of its mandate on 31 October 2019, the Commission's spokesperson reportedly stated that there was no precise timetable for the future developments. If the industry's joint proposal were not to satisfy the Commission, the latter will reportedly launch an impact assessment to review all available options. All interested stakeholders should closely follow this process, in particular if the Commission decides to launch an impact assessment to review available options, which might very well include mandatory nutrition information labelling for alcoholic beverages.

As the new EU '*waste directive*' addresses for the first time littering, the UK is considering a tax for single-use plastic waste, including chewing gum

On 4 June 2018, *Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste* entered into force and puts forward a comprehensive approach to tackling litter, notably by promoting prevention. *Directive (EU) 2018/851* notes that the fight against litter should be a shared effort between competent authorities, producers and consumers. Consumers should be incentivised to change their behaviour, while producers should promote the sustainable use of and contribute to the appropriate end-of-life management of their products. This applies, *inter alia*, to chewing gums, which after their use are often dumped by consumers in the environment. In the UK, for instance, there is a debate on establishing a tax for single-use plastic waste, which would include chewing gum.

The characteristic components of chewing gums are the gum base, which may comprise a complex mixture of elastomers, natural and synthetic resins, fats, emulsifiers, waxes, antioxidants and softeners, as well as the sweetening and flavouring agents. Chewing gum bases, the non-nutritive, insoluble components of chewing gum that are formulated to gradually release flavours, sweeteners and functional ingredients during sustained chewing, are typically made from food-grade polymers, waxes and softeners, which are not biodegradable and often require special equipment for removal from pavements or other surfaces.

Directive (EU) 2018/851 provides that litter, whether in cities, on land, in rivers and seas or elsewhere, has direct and indirect detrimental impacts on the environment, the well-being of citizens and the economy, and that the costs to clean it up present an unnecessary economic burden for society. The Directive calls on EU Member States to take measures aimed at preventing all forms of abandonment, dumping, uncontrolled management or other forms of discarding of waste. EU Member States must also take measures to clean up litter present in the environment, irrespective of its source or size and regardless of whether waste has been discarded wilfully or by negligence. According to *Directive (EU) 2018/851,* measures to prevent and reduce litter from products that are the main sources of littering in the natural and marine environments could consist of, *inter alia*, improvements in waste management infrastructure and practices, economic instruments and awareness raising campaigns. In putting forward provisions that concern national and local authorities, producers of items that often end up as litter, as well as EU citizens, the Commission has adopted a '*shared responsibility*' approach to address this challenge. It is the first time that litter and littering have been included so comprehensively in an EU '*waste directive*'. *Directive (EU) 2018/851* foresees that: 1) EU Member States take responsibility for addressing littering and litter in their policies and programmes and take steps to make sure citizens respect the rules; 2) Producers take responsibility for communicating litter prevention information to citizens; and 3) EU citizens take their personal responsibility of not dropping litter, or potentially face legal consequences.

Currently, most EU Member States do not have either national or regional litter prevention strategies. Therefore, *Directive (EU) 2018/851* obliges EU Member State governments to develop litter prevention strategies in their national waste management plans. The latter must be periodically prepared and shared with the Commission. From now on, the amended Article 28(3)f) of *Directive 2008/98/EC* provides that waste management plans must contain, as appropriate and taking into account the geographical level and coverage of the planning area, measures "*to combat and prevent all forms of littering and to clean up all types of litter*". The new Article 9 of *Directive 2008/98/EC* on prevention of waste addresses litter in letters k) to m) of paragraph 1 thereof: EU Member States must take measures to prevent waste generation. Those measures shall, at least: k) Identify products that are the main sources of littering and take appropriate measures to prevent and reduce litter from such products; l) Aim at halting the generation of marine litter as a contribution towards the UN Sustainable Development Goal to prevent and significantly reduce marine pollution of all kinds; and m)

Develop and support information campaigns to raise awareness about waste prevention and littering.

In parallel, the Commission proposes that producers whose products frequently end up as litter, take on a clear responsibility to communicate to the users or consumers of their products with respect to litter prevention. This obligation would be implemented in practice via the so-called '*producer responsibility organisations*' (set up by producers in the EU Member States) to collectively manage the individual responsibility of companies to guarantee appropriate collection and waste management of their products once they have been used. *Directive (EU) 2018/851* adds a fifth paragraph to Article 8 of *Directive 2008/98/EC on waste*, which requires the Commission to organise an exchange of information between EU Member States and the actors involved in extended producer responsibility schemes on the practical implementation. The new Article 8a of *Directive 2008/98/EC on waste* establishes general minimum requirements for extended producer responsibility schemes. EU Member States must: 1) Define in a clear way the roles and responsibilities of all relevant actors involved, including producers of products placing products on the market of the EU Member State, organisations implementing extended producer responsibility obligations on their behalf, private or public waste operators, local authorities and, where appropriate, re-use and preparing for re-use operators and social economy enterprises; 2) In line with the waste hierarchy, set waste management targets; 3) Ensure that a reporting system is in place to gather data on the products placed on the market of the EU Member State by the producers of products subject to extended producer responsibility and data on the collection and treatment of waste resulting from those products; and 4) Ensure equal treatment of producers of products regardless of their origin or size, without placing a disproportionate regulatory burden on producers, including small and medium-sized enterprises, of small quantities of products.

For EU citizens, *Directive (EU) 2018/851* requires EU Member States to make littering an offence, with the possibility of consequent sanctions. On the other hand, incentive systems addressed at consumers may be introduced to prevent litter, to encourage less littering and more recycling. The new Article 36 of *Directive 2008/98/EC on waste* (covering enforcement and penalties) reads that EU Member States must take the necessary measures to prohibit the abandonment, dumping or uncontrolled management of waste, including littering, and must lay down provisions on the penalties applicable and must take all measures necessary to ensure that they are implemented. The penalties shall be effective, proportionate and dissuasive.

It remains unclear what types of litter are covered by the new responsibilities. The requirement on EU Member States to take "*measures to combat all forms of littering and clean up all types of litter*" will in practice mean that the obligations to be placed on product groups already served by producer responsibility organisations (notably, packaging) will also have to be extended to product groups, such as tobacco, chewing gum, newspapers and magazines, paper tissues and others, all of which are frequently dropped as litter. A very important definition is the one of '*municipal waste*', which reads: "*(a) mixed waste and separately collected waste from households, including paper and cardboard, glass, metals, plastics, bio-waste, wood, textiles, packaging, waste electrical and electronic equipment, waste batteries and accumulators, and bulky waste, including mattresses and furniture; (b) mixed waste and separately collected waste from other sources, where such waste is similar in nature and composition to waste from households".* The definition is without prejudice to the allocation of responsibilities for waste management between public and private actors. The Commission has originally proposed to extend the definition of municipal waste to include: waste from market cleansing; waste from street cleaning services, including street sweepings; the content of litter containers; and waste collected from park and garden maintenance activities. Under the definition as adopted, arguably, the term "*mixed waste and separately collected waste from other sources*" may not cover urban cleansing and producer responsibility may not cover its costs.

All EU Member States must bring into force laws, regulations and administrative provisions necessary to comply with the *Directive (EU) 2018/851* by 5 July 2020. *Directive (EU) 2018/851* provides that measures to prevent and reduce litter from products that are the main sources of littering in the natural and marine environments could consist of, *inter alia*, improvements in waste management infrastructure and practices, economic instruments and awareness raising campaigns. Arguably, such economic instrument could include taxes. In recent months, there have been calls in the UK to have the chewing gum industry pay for the damage that the mishandling by consumers of its products cause to public areas. Costs to clean up used gums on the UK's streets reportedly amount to £60 million (EUR 68 million) a year, but large manufacturers like *Wrigley*, which sells 95% of the chewing gum consumed in the UK, are accused of contributing only 1% of that sum to support the Chewing Gum Action Group (hereinafter, CGAG), which was founded in 2006 to tackle the problem of chewing gum litter and is chaired by the UK's Department for Environment, Food and Rural Affairs. The Government of the UK is exploring the environmental impact of '*single-use plastics*' and potentially considering taxes, but is yet to determine if chewing gum would be included. Earlier this year, the Government of the UK held a call for evidence to explore how changes to the tax system or charges could be used to reduce the amount of single-use plastics waste. It looked broadly across the whole supply chain, from production and retail to consumption and disposal, in order to gain the best possible understanding of the whole landscape and determine the best course of action. It also sought to explore how best to drive innovation in this area to achieve the same outcomes. A report by the UK's Treasury, published in March 2018, refers to boxes of takeaway food and disposable coffee cups as '*single-use plastics*', but does not explicitly name chewing gum. The report states that single-use plastics "*includes all products that are made wholly or partly of plastic and are typically intended to be used just once and/or for a short period of time before being disposed of*". In August 2018, the Government of the UK published the results of a consultation, conducted between 13 March and 18 May 2018, on taxes and charges to help reduce single use plastics, and possibly a levy on gum. The summary of the responses states that "*litter was also identified as a significant problem and financial burden for local authorities, as well as being a general disamenity of public places. There was also a suggestion to place an environmental tax on the sale of cigarettes and chewing gum which are currently heavily littered, with some of the revenues ring-fenced for clearing up litter*".

The International Chewing Gum Association (hereinafter, ICGA) and its members acknowledge that there is an impact that chewing gums can have on the environment, and are committed to doing their part to ensure that consumers dispose of their chewing gum properly. According to ICGA, research has shown that littered gum is caused by the irresponsible behaviour of a minority of gum chewers. Therefore, the only sustainable solution to deal with the issue of littered gum, as well as all other forms of litter, is to change individual behaviour of consumers by educating them. ICGA members promote good disposal practice through use of on-pack icons, and through the use of proper disposal messages in advertising and at point of sale. ICGA members also work alongside governments and environmental organisations to advance litter education in communities. For instance, in the UK, the CGAC develops and sponsors education programs with an average of 15 local authorities each year. These campaigns appear to have been very successful in reducing littered gum by as much as 25% to 40%. ICGA considers that consumer education will always be the most important factor in reducing the impact of littered gum on the environment and generating long-term, sustainable behavioural change.

At the same time, ICGA members are committed to continuously invest in research focused on developing a gum base that is less adhesive and/or more degradable if and when it is improperly disposed of. Some companies and research organisations are exploring degradable alternatives, but these have yet to be utilised by the major gum producers. Chemicals company *Itaconix* (formerly *Revolymer*) developed a synthetic polymer chewing gum base named Rev7, which it claims degrades over two to three months in drains and in less than two years on pavements. This synthetic polymer chewing gum base received a novel foods authorisation under *Commission Implementing Decision 2012/461/EU authorising the placing on the market of a novel chewing gum base as a novel food*

ingredient under Regulation (EC) No 258/97 and repealing Commission Implementing Decision 2011/882/EU. According to *Decision 2012/461/EU*, the designation of the novel chewing gum base on the labelling of the foodstuff containing it must be '*gum base (including 1,3-butadiene, 2-methyl-homopolymer, maleated, esters with polyethylene glycol mono-Me ether)*' or '*gum base (including CAS No: 1246080-53-4)*'. However, there has not been an uptake of Rev7 by the major chewing gum producers (possibly also linked to the labelling requirements), which prefer to focus on education to address gum litter.

The increased (regulatory) activity in the EU Member States and the EU on littering and waste, including eventual tax schemes, should be monitored and stakeholders should be prepared to participate in shaping policies by interacting with relevant EU and EU Member State institutions and affected stakeholders.

Recently Adopted EU Legislation

Customs Law

- *Council Decision (EU) 2018/1252 of 18 September 2018 on the signing, on behalf of the Union, of the Agreement in the form of an Exchange of Letters between the European Union and the People's Republic of China in connection with DS492 European Union — Measures affecting Tariff Concessions on Certain Poultry Meat Products*

- *Commission Implementing Regulation (EU) 2018/1232 of 11 September 2018 amending Implementing Regulation (EU) No 1354/2011 as regards Union tariff quotas for sheepmeat and goatmeat originating in Norway and in New Zealand*

Trade Remedies

- *Commission Implementing Regulation (EU) 2018/1236 of 13 September 2018 terminating the investigation concerning the possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2015/82 on imports of citric acid originating in the People's Republic of China by imports of citric acid consigned from Cambodia, whether declared as originating in Cambodia or not*

Food and Agricultural Law

- *Commission Regulation (EU) 2018/1233 of 12 September 2018 establishing a prohibition of fishing for redfish in NAFO 3M area by vessels flying the flag of a Member State of the European Union*

Other

- *Council Decision (EU) 2018/1257 of 18 September 2018 on the signing, on behalf of the European Union, of the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean*

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