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TRADE PERSPECTIVES©

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The European Commission officially launched the procedure to temporarily suspend trade preferences for Cambodia

On 11 February 2019, the European Commission (hereinafter, Commission) launched the procedure for the withdrawal of trade preferences under the EU's *Everything But Arms* (hereinafter, EBA) preferential trading scheme, which is part of the EU's Generalised Scheme of Preferences (hereinafter, GSP) for Cambodia. On 12 February 2019, the Commission published *Commission Implementing Decision of 11 February 2019 on the initiation of the procedure for temporary withdrawal of the tariff preferences provided to the Kingdom of Cambodia under Article 19 of Regulation (EU) No 978/2012* in the Official Journal of the EU, marking the beginning of a six-months monitoring period. This development is a consequence of the EU's concerns related to alleged serious human and labour rights violations in Cambodia. The EU's GSP scheme links trade with development policy objectives, pursuing a '*value-based*' trade policy. This also means that trade policy can, at times, become a delicate political issue.

The EU's GSP scheme is a system of unilateral trade concessions that reduces or eliminates tariffs on a wide range of exports from developing and least-developed countries. With the GSP, the EU intends to increase export revenues in developing countries in order to reduce poverty and promote sustainable development and good governance. The GSP focuses solely on granting tariff preferences for trade in goods and does not apply to services or other areas of trade. The EU's GSP has been in place since 1971, although it has been periodically 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 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences* (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. In its current form, the EU's GSP scheme foresees three types of preferential arrangements: 1) The standard GSP (for developing countries matching certain eligibility criteria) 2) A special incentive arrangement for sustainable development and good governance, known as '*GSP+*'; and 3) A special arrangement for least-developed countries (hereinafter, LDC), known as the *Everything But Arms* (EBA) arrangement because it grants full duty-free and quota-free access to the EU Single Market for all products, except arms and armaments.

A country is granted EBA status if it is listed as a LDC by the United Nation's (hereinafter, UN) Committee for Development Policy. There are currently 47 countries on the list of LDCs, which is reviewed every three years. Cambodia has been listed as an LDC since 1991. Countries do

not need to apply to benefit from the EBA scheme, rather they are added to or removed from the relevant list through a delegated regulation on the initiative of the Commission. Importantly, under Article 19 of the GSP Regulation, EBA preferences may be withdrawn in case of exceptional circumstances enumerated in Article 19(1) of the Regulation. This concerns, under Article 19(1)(a) of the GSP Regulation, serious and systematic violations of principles laid down in fundamental human rights and labour rights conventions listed in Part A of Annex VIII to the GSP Regulation, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights, and thirteen other international human and labour rights conventions.

In recent months, the Commission increased its efforts to assess the human rights situation in Cambodia. This was already noted in the EU's biennial GSP report of January 2018, and, in July 2018, a delegation of the Commission and the European External Action Service (hereinafter, EEAS) visited Cambodia to evaluate the situation on the ground, following reports on "*worrying human rights and labour rights developments in the country*". After the mission, the Commission noted that it would "*analyse as a matter of priority the information gathered during the mission to consider further steps*" and that the analysis would "*also take into account further written submissions from the Cambodian authorities, reports of the International Labour Organisation (ILO) and other bodies responsible for monitoring the implementation by Cambodia of the international conventions"* referred to in the GSP Regulation. According to the European Commissioner for Trade, Cecilia Malmström, the assessment largely focussed "*on the serious decline in the area of political and electoral rights, as well as a curbing of civil society activities*" and on alleged "*deficiencies when it comes to land dispute resolution mechanisms, and serious threats to freedom of association and collective bargaining rights*". On 5 October 2018, Commissioner Malmström, notified Cambodia of the EU's intention to launch the procedure to temporarily suspend trade preferences.

On 11 February 2019, the Commission launched the procedure for the withdrawal of EBA trade preferences for Cambodia. The legal basis of the procedure is set in Article 19 of the GSP Regulation (see *Trade Perspectives*, Issue No. 22 of 30 November 2018), which details the legal procedure that is to be followed. The possibility of temporary, full or partial withdrawal is foreseen in case of serious and systematic violation of fifteen key international human and social rights conventions. When the Commission considers that there are "*sufficient grounds*" justifying the temporary withdrawal of the tariff preferences, provided under any of the preferential arrangements under the GSP Regulation, the Commission is first required to adopt an implementing act initiating the procedure for temporary withdrawal in accordance with the advisory procedure referred to in Article 39(2) of the GSP Regulation. The Commission is also required to inform the European Parliament and the Council of the EU (hereinafter, Council) of its implementing act.

On 12 February 2019, the Commission published its *Implementing Decision on the initiation of the procedure for temporary withdrawal of the tariff preferences provided to the Kingdom of Cambodia*. The EU's concerns focus on three main areas: 1) Political rights and the reduction of the space for democratic opposition and civil society; 2) Labour issues and limitation of freedom of association and collective bargaining rights; and 3) Concerns over Economic Land Concessions, particularly in the sugar sector. It is important to note that the launch of the procedure does not mean that Cambodia's tariff preferences will immediately cease to apply. The withdrawal of the EBA trade preferences would only be the last resort. Rather, the launch of the procedure marks the beginning of a new phase in the EU's engagement process with Cambodia, which had started on 26 February 2018 following the EU Foreign Affairs Council Conclusions, which stated that "*the Council invites the Commission to enhance the monitoring of the situation and to step-up the engagement with Cambodia*" in light of the provisions of the GSP Regulation.

On the basis of the procedure outlined in Article 19 of the GSP Regulation, the Commission monitors and evaluates the situation in Cambodia for six months, from the date of the official publication of the notice. During that period, the Commission must provide Cambodia with every opportunity to cooperate and is required to seek and assess all the information that it

considers necessary. Within three months from the expiry of the six-month period, the Commission is required to submit to Cambodia a report on its findings and conclusions. Cambodia has the right to submit comments on the report, during a period of at most one month. Within six months from the expiry of the six-month period, the Commission is then required to decide to either: 1) Terminate the temporary withdrawal procedure; or 2) Temporarily withdraw the tariff preferences provided to Cambodia under the EBA preferential arrangement. Should the Commission consider that the findings do not justify a temporary withdrawal, it would be required to adopt an implementing act on the termination of the temporary withdrawal procedure. Should the Commission consider that the findings do justify a temporary withdrawal, it would be empowered to adopt a delegated act to amend Annex IV of the GSP Regulation, in order to temporarily withdraw the tariff preferences provided to Cambodia under the EBA. It is also at this stage of the procedure that the Commission will decide on the scope and duration of the preferences to be withdrawn. The delegated act must be based, *inter alia*, on the evidence received, and, when the Commission decides in favour of temporary withdrawal, such delegated act only takes effect six months after its adoption. The Commission will adopt a final decision only after seeking the opinion of the European Parliament and the Council. The GSP Regulation also provides that, where the reasons justifying temporary withdrawal no longer apply before the delegated act is to take effect, the Commission would be empowered to repeal the act in accordance with the urgency procedure pursuant to Article 37 of the GSP Regulation.

In a statement of 11 February 2019, the EU's High Representative for Foreign Affairs and Vice President of the Commission, Federica Mogherini, stated that the Cambodian authorities had "*taken a number of positive steps*", such as the release of political figures, civil society activists and journalists. However, she went on to state that, "*without more conclusive action from the government, the situation on the ground calls Cambodia's participation in the EBA scheme into question*". Commissioner Malmström pointed out that the launch of the withdrawal procedure was "*neither a final decision nor the end of the process. But the clock is now officially ticking and we need to see real action soon*". Commissioner Malmström also stressed that the EU's trade policy was based on values and that "*these are not just empty words*". In addition, she noted that the EU's "*engagement with the situation in Cambodia has led* [the EU] *to conclude that there are severe deficiencies when it comes to human rights and labour rights in Cambodia that the government needs to tackle if it wants to keep its country's privileged access" to the EU market.*

The impact of the withdrawal of EBA preferences would likely be economically and commercially significant for Cambodia. The EU is Cambodia's largest trading partner, accounting for 45% of Cambodian exports in 2018. Exports to the EU Single Market amounted to EUR 4.9 billion in 2018, almost doubling the EUR 2.5 billion recorded in 2013 and compared to the minute levels before the EU granted Cambodia EBA status. 95.7% of these exports entered the EU market under EBA tariff preferences. Most exports concern textile products, which are originating from a sector that employs around 700,000 people. Between 2011 and 2016, exports from Cambodia to the EU increased by 227%. Cambodia is currently the second largest user of EBA preferences, only behind Bangladesh.

As detailed above, the EU's GSP framework links trade preferences with the compliance and the upholding of certain fundamental human rights and labour rights conventions. Inevitably, this contributes to trade policy becoming even more '*political*' and delicate than usual. The clear procedures and the continuous involvement of the beneficiary country are the main elements to achieving a balanced and objective process. The EU takes pride in pursuing a value-based trade policy, as Commissioner Malmström underlined once again. However, it must be ensured that the EU apply the rules under the GSP Regulation, but also of its trade policy, in more general terms, in a consistent and non-discriminatory manner, applying the same legal and moral standards to all trading partners. While the GSP Regulation provides for structured procedures applicable to the respective beneficiary countries, no such procedures exist for countries that do not fall within the scope of application of the GSP Regulation, but where, nonetheless, similar situations may arise.

The EU's GSP Regulation provides for clear, comprehensive and binding procedures before any set of trade preferences may be withdrawn. In particular, it provides for the involvement of the beneficiary country, in this case Cambodia, and for lengthy monitoring and evaluation periods. A similar decision by the EU might also be forthcoming with respect to Myanmar, where the EU continues to investigate the human rights situation. All interested stakeholders in Cambodia and the EU, as well as all relevant industry sectors, should carefully assess the potential consequences of the possible withdrawal of preferences and engage with the relevant EU officials and their respective Governments.

In an action plan, Germany calls for binding rules for sustainably-produced cocoa

On 23 January 2019, the German Federal Ministry of Food and Agriculture (*i.e.*, *Bundesministerium für Ernährung und Landwirtschaft*, hereinafter, BMEL, in its German acronym) and the Federal Ministry for Economic Cooperation and Development (*i.e.*, Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung, hereinafter, BMZ, in its German acronym), adopted a 10-Point Plan for Economic Cooperation and Development on Cocoa with the objective of achieving a more sustainable cocoa sector, including a call for binding regulations for sustainably-produced cocoa. In adopting the action plan, Germany intends to support the international framework of the United Nations Sustainable Development Goals (SDGs) and the Berlin Declaration of the 4th World Cocoa Conference "*A New Vision for the Cocoa Sector*", which was held in Germany in April 2018, hosted by Germany and the International Cocoa Organization (ICCO). Germany proposes, *inter alia*, an EU standard on sustainable cocoa.

The German Initiative on Sustainable Cocoa (hereinafter, GISCO) is a joint initiative of the Federal German Government, represented by the BMEL and the BMZ, the German sweets and confectionary industry, the German retail grocery trade, and civil society. This multi-stakeholder initiative aims at improving the livelihood of cocoa farmers and their families, and to increase the proportion of sustainably-produced cocoa. Members of the GISCO intend to closely coordinate with the Governments of cocoa-producing countries. The GISCO was founded in June 2012 and, currently, has about 70 members and is open to other interested parties.

Under the 10-Point Plan announced in January 2019: 1) Germany explicitly supports multi-stakeholder initiatives, such as the *Sustainable Cocoa Forum* with its joint projects, such as the '*Pro-Planteurs*' project, and believes that the complex challenges in the cocoa sector could only be sustainably addressed through joint initiatives; 2) Germany welcomes the goal of the *Sustainable Cocoa Forum* that, by 2020, at least 70% of cocoa in the cocoa-containing end-products sold by the producing members of the *Sustainable Cocoa Forum* in Germany should come from certified or independently verified crops. In the long term, the aim is that 100% come from sustainable cultivation; 3) Binding regulations are to set a uniform standard for sustainably-produced cocoa. Standards may be set on a voluntary or statutory basis, while Germany is committed to establishing a single standard for sustainable cocoa production at the European level; 4) International standard-setting organizations are supported by Germany in the evaluation and development of their standard systems for a sustainable cocoa sector; 5) In the context of consumer information, and with the aim of raising awareness of sustainability issues, Germany commits to inform consumers about sustainable consumption and the working, production and delivery conditions in the cocoa sector, informing about the various approaches of certification and independent verification of the cultivation of cocoa, as well as their identification on cocoa-containing end-products; 6) Germany advocates that a sustainable cocoa sector would only be achieved if cocoa farmers do not live in poverty, supporting projects that aim at increasing the income of cocoa farmers; 7) Germany is committed to forest conservation in the cocoa sector and, for the cultivation of cocoa, no illegal deforestation should take place and no primary forest should be destroyed; 8) Germany notes that abusive child labour and gender inequality continue to be major challenges in the cocoa

sector. Through projects, international processes and political dialogue with producer countries, Germany is committed to cocoa cultivation without abusive child labour and to strengthening the role of women in the cocoa sector; 9) Through projects and political dialogue with producer countries, Germany intends the strengthening of producer groups, the diversification of cultivation and nutrition, as well as knowledge transfer and the development of a local processing industry. Smallholder farmers are supposed to be assisted to get access to long-term investment and risk insurance, for example against the effects of climate change; and 10) By actively participating in the relevant international formats and networking initiatives from various sectors, a basis for knowledge and experience transfer is supposed to be created. Additionally, there should be coordination on international processes. Through the *Forum on Sustainable Cocoa*, Germany promotes international cooperation with other sectoral initiatives (such as in Switzerland and the Netherlands) with the aim of creating knowledge sharing and working together on cross-cutting issues.

In terms of regulation and trade law, the German 10-Point Plan notably calls for the establishment of a single EU standard for sustainably-produced cocoa. Such a standard, as well as issues such as deforestation, labour rights and consumer information, look poised to have the biggest impact on the cocoa and chocolate industry and cocoa trade. In terms of labelling, it appears that there is, currently, a myriad of different claims and voluntary sustainability certification schemes that confuse consumers rather than informing them. All of these logos and labels compete with each other and often change their standards on a regular basis.

Reportedly, a BMEL spokesperson noted that a single, EU-wide standard for sustainably-produced cocoa, established on either a voluntary or statutory basis, would likely significantly influence trade and production standards across the cocoa industry. Already in 2011, the *European Committee for Standardisation* (hereinafter, CEN), the organisation of national standardisation organisations of 33 European countries, had launched a process to establish a '*general standard for sustainable cocoa*' and the *International Organisation for Standardisation* (hereinafter, ISO), with its 163 Member Countries, soon joined the initiative. Many cocoa-producing countries also participated in the debate and, through national committees, other parties (such as companies and NGOs) joined. The CEN/ISO standard for sustainable and traceable cocoa (*i.e.*, ISO 34101-1: *Sustainable and traceable cocoa*, Part 1: *Requirements for cocoa sustainability management systems*; ISO 34101-2: Part 2: *Requirements for performance (related to economic, social, and environmental aspects*); ISO 34101-3: Part 3: *Requirements for traceability*; and ISO 34101-4: *Part 4: Requirements for certification schemes*) is now under preparation for its final publication, which was originally planned for the end of 2018, but has been postponed to 2019.

Once the CEN/ISO standard has been established, and implemented, "*Germany strives to enact a law in which this standard forms the basis for sustainably produced cocoa; i.e. only cocoa that complies with this standard can be termed sustainable*", the BMEL spokesperson reportedly said, adding that Germany would also "*introduce this approach at EU-Level".* This is an interesting development in the broader context of the debate on sustainability standards, which could serve as an exemplary approach for other commodities, for which currently a multitude of mandatory, voluntary, public and/or private sustainability schemes exist. The development of a multilateral sustainability standard, which can then be taken up and refined at national or regional level for domestic or regional standards, as proposed by Germany for the EU, would ensure that, once adoption of the standard increases, a streamlined approach becomes reality. Such an approach would clearly be the most trade-facilitative, in particular as Members of the WTO are generally required to base their standards on international standards, insomuch as they are available, unless pertinent reasons exist that would warrant a deviation.

Other EU Member States established similar initiatives. In December 2018, Belgium, the second biggest EU importer of cocoa after Germany, called on the Commission to propose a due diligence regulation for the cocoa sector covering human rights violations and deforestation. The recommendation is part of a larger public-private strategy in Belgium called *Beyond Chocolate*, which aims at providing a fair income to cocoa producers and to stop

deforestation driven by cocoa production by 2030. Belgian chocolate producers and supermarkets committed to make Belgian chocolate 100% sustainable by 2025. Deputy Prime Minister and Minister for Development Cooperation Alexander De Croo signed the partnership along with major chocolate producers, NGOs like the *Rainforest Alliance* and several supermarket groups. *Inter alia*, all Belgian chocolate produced or traded in Belgium will be required to meet a relevant certification standard, or to be produced with cocoa products from company-specific sustainability programmes, by the end of 2025 at the latest.

In December 2018, *Cargill*, one of the world's largest chocolate manufacturers, announced a new strategic action plan '*Protect our Planet*' to eliminate deforestation, expanding action beyond Côte d'Ivoire and Ghana to five origin countries (including Brazil, Indonesia and Cameroon) and to its indirect cocoa supply chains. *Cargill* announced that it was aiming at achieving 100% cocoa bean traceability. The plan also includes a commitment of "*no further conversion*" of any forest land in Côte d'Ivoire and Ghana for cocoa production. In this context, on 14 January 2019, the EU launched a public consultation titled '*Deforestation and forest degradation – stepping up EU action*', which is open for comment until 25 February 2019. In the consultation document, the Commission acknowledges that the drivers of deforestation are multiple and complex, and depended on specific regional and national contexts. In 2016, the FAO report on *Forests and agriculture: land-use challenges and opportunities* showed how agricultural expansion for the production of commodities (*e.g.*, soy, beef, palm oil, coffee, cocoa) drives about 80% of all deforestation, specifically in tropical countries, while mining, urbanisation and infrastructure are responsible for less than 10% each. The EU is indeed among the major global importers of a number of specific commodities associated with deforestation, the Commission document states, highlighting that the EU imports 80% of the world's cocoa exports.

The debate on the sustainable sourcing of commodities continues and concerns a multitude of crops. The sometimes-diverging interests of producing and importing countries and their different perspectives should always be consolidated in order to achieve standards that take into account all relevant aspects and views. The elaboration of a sustainability standard at the multilateral level can be considered as exemplary for other commodities and will, ideally, lead to immediate acceptance and broad implementation of the new standard. Stakeholders involved in cocoa trade should prepare for the publication of the new standards for sustainable cocoa. At the same time, stakeholders involved with other commodities should diligently assess the standard-setting process for sustainable cocoa in order to determine the way forward for their respective goods.

Norway's new risk assessment of energy drinks and caffeine and the regulation of energy drinks in the EU

The effect of energy drinks with high sugar, caffeine and taurine content on adults, and especially on adolescents and children, is an ongoing issue throughout Europe and of particular concern to public health authorities. On 1 February 2018, the Panel on Food Additives, Flavourings, Processing Aids, Materials in Contact with Food and Cosmetics of the Norwegian Scientific Committee for Food and Environment (*i.e.*, *Vitenskapskomiteen for mat og miljø*, hereinafter, VKM) published a scientific opinion entitled *Risk assessment of energy drinks and caffeine*. The Norwegian Government will now study whether to introduce specific measures on energy drinks, as some EU Member States already did.

The VKM's assessment concluded that occasional energy drink consumption by children in moderation was not linked to negative health effects. However, there was concern over the addictive nature of the drinks' high caffeine content. Children and adolescents, who consume energy drinks, tend to have a higher caffeine intake than youths, who do not consume energy drinks, the opinion states. The risk assessment, carried out on behalf of the Norwegian Food Safety Authority, found that caffeine consumption above 1.4 milligrams (mg) per kilogram of body weight per day (kg/bw/day) might pose a risk of sleep disturbance. If the intake is above

3 mg per kilogram of body weight per day, there is a risk of effects on the cardiovascular and central nervous system. The opinion finds that, in the age group of 8-12 years, high chronic intake of energy drinks might represent a risk for sleep disturbance if all consumed energy drinks contained either 40 or 55 mg caffeine/100 ml, while in the age groups of 13-15 and 16-18 years, high chronic intake of energy drinks might represent a risk for sleep disturbance for adolescents if all consumed energy drinks contained either 32, 40 or 55 mg caffeine/100 ml. Furthermore, in the age group of 13-15 years, high chronic intake of energy drinks might represent a risk for general adverse health effects if all consumed energy drinks contained either 40 or 55 mg caffeine/100 ml. The highest acute intake estimates of energy drinks, if all consumed energy drinks contained either 15, 32, 40 or 55 mg caffeine/100 ml and above, might all represent a risk for general adverse health effects across all age groups.

In Norway, the basis for the regulation of energy drinks is the EU's *Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety* (hereinafter, General Food Law or GFL), which leaves the responsibility for their safety to the food business operator, according to Article 17 of the GFL. The GFL and other EU food law also applies to Norway as a Contracting Party of the European Economic Area (EEA) Agreement (together with Iceland, Liechtenstein and Switzerland). The GFL has been implemented into Norwegian legislation through *Regulation Nr. 1620 of 22 December 2008 on general principles and requirements in the food regulations* (*i.e.*, *Forskrift 22 desember 2008 Nr. 1620 om generelle prinsipper og krav i næringsmiddelregelverket*). Foods, including energy drinks, to which vitamins, minerals and certain other substances have been added, are regulated by *Regulation (EC) No 1925/2006 on the addition of vitamins, minerals and certain other substances to foods*, implemented in Norwegian legislation through *Regulation No. 247 of 26 February 2010 on the addition of vitamins, minerals and certain other substances to foodstuffs* (*i.e.*, *Forskrift 26 februar 2010 Nr 247 om tilsetning av vitaminer, mineraler og visse andre stoffer til næringsmidler*).

According to Articles 4 and 6 of these Norwegian provisions, foods and drinks to which vitamins, minerals and/or amino acids have been added, may not be placed on the Norwegian market without special permission from the Norwegian Food Safety Authority. This applies to energy drinks as well. The applications are handled on a case-by-case basis. The addition of caffeine, and other '*other substances*', to energy drinks and other foods is also covered by the scope of *Regulation (EC) No 1925/2006*, but remains largely unregulated. Therefore, under the current domestic Norwegian regulations, caffeine may be added to foods (including energy drinks) without prior permission, as long as the food business operator can ensure their safety. When added as a flavouring, caffeine is regulated under *Regulation (EC) No 1334/2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods*, implemented into Norwegian legislation through *Regulations No. 669 of 6 June 2011 on aroma and food ingredients with flavouring properties for use in and on foodstuffs* (*i.e.*, *Forskrift 6 juni 2011 nr 669 om aroma og næringsmiddelingredienser med aromagivende egenskaper til anvendelse i og på næringsmidler*). When the caffeine content of a beverage, energy drinks included, exceeds 150 mg caffeine/litre, the labelling of the product must state the following: "*High caffeine content. Not recommended for children or pregnant or breast-feeding women*" in the same field of vision as the name of the beverage, followed by a reference in brackets to the caffeine content expressed in mg per 100 ml, according to Article 10(1) and Annex III of *Regulation (EC) 1169/2011 on food information to consumers*, implemented into Norwegian legislation through *Regulation No. 1497 of 28 November 2014 on food information for consumers* (*i.e.*, *Forskrift 28 november 2014 nr. 1497 om matinformasjon til forbrukerne*).

While current Norwegian law on energy drinks appears to be in line with EU law, some EU Member States are going further, establishing various sales restrictions, which lead to a piecemeal approach within the EU. Lithuania, which adopted already in 2013 strict health warnings on energy drinks, established, in May 2014, a total ban of the sale of high-caffeine energy drinks to minors. France adopted a new excise tax on energy drinks that came into effect on 1 January 2014 (see *Trade Perspectives*, Issue No. 7 of 4 April 2014). Also other EU Member States, such as Latvia (since 1 June 2016), have banned the sale of energy drinks

containing caffeine or stimulants like taurine and guarana to minors. In Sweden, some types of energy drinks may only be sold in pharmacies and are banned for sale to adolescents. Hungary introduced a public health tax that includes energy drinks in 2012, which significantly increased the prices for such beverages. The UK is currently pondering restricting the sale of energy drinks to children under 16 years of age. If passed, the legislation would mean that retailers could no longer sell drinks with more than 150 mg of caffeine per litre to children. The Government of the UK is now evaluating responses to its consultation on "*ending the sale of energy drinks to children*", which closed on 21 November 2018.

Caffeine consumption has been a contentious issue in recent years. In 2011, health claims on caffeine (relating to improved concentration, increased alertness, endurance capacity, endurance performance and reduction in the rated perceived exertion/effort during exercise) were evaluated by the European Food Safety Authority (hereinafter, EFSA) with a favourable outcome. The conditions of use for some of these claims were that caffeine should be consumed one hour prior to exercise at doses of 3mg/kg/bw for claims on endurance capacity and performance, and of 4mg/kg/bw for claims on reduction in the rated perceived exertion/effort during exercise. However, the health claims on caffeine with favourable scientific opinions by EFSA were not included in the positive list of general function claims adopted in *Commission Regulation (EU) No. 432/2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health*. In June 2016, the European Parliament's Committee on the Environment, Public Health and Food Safety (ENVI) adopted a motion, which called on the Commission to withdraw the draft regulation authorising four health claims on caffeine (*i.e.*, "*caffeine contributes to an increase in endurance performance*", "*caffeine contributes to an increase in endurance capacity*", "*caffeine helps to increase alertness*" and "*caffeine helps to improve concentration*"). Members of the European Parliament expressed concerns on the possibility that the health claims would create a health halo on sugary energy drinks, which are largely consumed by adolescents. The different caffeine claims have been put '*on hold'*, following discussions between the European Commission and the EU Member States, whereby it appears that the authorities in some EU Member States were concerned that health claims related to caffeine might cause an increase in consumption, especially of highly-caffeinated soft drinks.

In a related matter, on 8 June 2017, the Court of Justice of the European Union (CJEU), in Case C-296/16 P Dextro Energy GmbH & Co. KG ("*Dextro*"), confirmed that a number of health claims relating to glucose could not be authorised, even after having been found scientifically substantiated by the EFSA) (see *Trade Perspectives*, Issue No. 12 of 16 June 2017). Both cases, the caffeine claims case and the Dextro case, show that there is a need for nutrient profiles for operators to have legal certainty in order to make certain health claims. In simple terms, so-called nutrient profiles are generally intended to determine whether foods are, based on their nutrient composition, eligible to bear claims (see *Trade Perspectives*, Issue No. 13 of 26 June 2015). Nutrient profiles must ensure that foods high in, *e.g.*, sugar, fat or salt, do not carry a nutrition or health claim. The application of nutrient profiles as an additional criterion in *Regulation (EC) No. 1924/2006 on nutrition and health claims made on foods* aims at avoiding a situation where nutrition or health claims mask the overall nutritional status of a food product, which could mislead consumers when trying to make healthy choices in the context of a balanced diet. The development of nutrient profiles by the European Commission, originally scheduled for January 2009, has not been finalised. Reportedly, the European Commission has started in 2017 the first phase of its work on the evaluation into the need for nutrient profiles as part of its Regulatory Fitness and Performance (REFIT) Programme. The next step would be another European Commission report on possible options for a way forward.

The described piecemeal approach of national measures on energy drinks does not do justice to the EU Internal Market. With regards to the developments in Norway, the Norwegian Food Safety Authority will send its recommendations to Norway's Ministry of Health and Care Services by the end of February 2018. Developments in the EU, its Member States and the EEA Member States on energy drinks, as well as on health claims and nutrient profiles, should be closely monitored and operators should be prepared to participate in shaping potentially

upcoming legislation by interacting with the respective institutions, relevant trade associations and affected stakeholders.

Recently Adopted EU Legislation

Customs Law

- *Commission Implementing Decision of 11 February 2019 on the initiation of the procedure for temporary withdrawal of the tariff preferences provided to the Kingdom of Cambodia under Article 19 of Regulation (EU) No 978/2012*

- *Commission Implementing Regulation (EU) 2019/249 of 12 February 2019 suspending the tariff preferences for certain GSP beneficiary countries in respect of certain GSP sections in accordance with Regulation (EU) No 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences for the period of 2020-2022*

Trade Remedies

- *Commission Implementing Decision (EU) 2019/266 of 14 February 2019 terminating the anti-dumping proceeding concerning imports of solar glass originating in Malaysia*

- *Commission Implementing Regulation (EU) 2019/261 of 14 February 2019 amending Implementing Regulation (EU) 2018/140 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cast iron articles originating in the People's Republic of China and terminating the investigation on imports of certain cast iron articles originating in India*

- *Commission Implementing Regulation (EU) 2019/262 of 14 February 2019 amending Council Implementing Regulation (EU) No 430/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia*

- *Commission Implementing Regulation (EU) 2019/251 of 12 February 2019 concerning the definitive anti-dumping duties imposed on imports from Hubei Xinyegang Steel Co., Ltd and amending Implementing Regulation (EU) 2015/2272 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China*

- *Commission Implementing Decision (EU) 2019/245 of 11 February 2019 accepting undertaking offers following the imposition of definitive countervailing duties on imports of biodiesel originating in Argentina*

- *Commission Implementing Regulation (EU) 2019/244 of 11 February 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Argentina*

Food and Agricultural Law

- *Commission Regulation (EU) 2019/268 of 15 February 2019 amending Regulations (EU) No 200/2010, (EU) No 517/2011, (EU) No 200/2012 and (EU) No 1190/2012 as regards certain methods for Salmonella testing and sampling in poultry*

Other

- *Commission Implementing Regulation (EU) 2019/260 of 14 February 2019 amending Implementing Regulation (EU) No 180/2014 as regards the volumes of traditional trade flows between certain outermost regions of the Union and the United Kingdom*

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