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Recently Adopted EU Legislation

The EU looks into reforming its Generalised Scheme of Preferences (GSP) and seeks input from stakeholders

On 15 April 2020, the European Commission (hereinafter, Commission) published the Inception Report to the Study in support of an impact assessment to prepare the review of GSP Regulation No 978/2012 and the related consultation strategy. In the same context, on 11 March 2020, the Commission has launched a public consultation on the reform of the EU’s Generalised Scheme of Preferences (hereinafter, GSP). Through the study, as well as the public consultation, the Commission intends to gather input to the reform process. The Commission is then expected to prepare a proposal to the Council and the European Parliament for a new regulation to succeed Regulation (EU) No 978/2012 of the European Parliament and the Council of 25 October 2012 applying a scheme of generalised tariff preference (hereinafter, GSP Regulation), as most of the rules contained therein will expire on 31 December 2023.

The EU’s Generalised Scheme of Preferences

The EU’s GSP is a scheme of unilateral trade concessions that reduces or eliminates tariffs on a range of exports from developing countries and least-developed countries (hereinafter, LDCs). The GSP is intended to increase export revenue in developing countries in order to reduce poverty and promote sustainable development and good governance. The GSP preferential arrangements focus solely on granting tariff preferences for trade in goods and do not extend to services or other elements covered by modern comprehensive trade agreements. The GSP is consistent with the World Trade Organization’s (hereinafter, WTO) 1979 ‘Enabling Clause’, which operates as an exception to one of the pillars of the WTO system, the most-favoured nation (MFN) obligation, allowing developed countries to grant differential and more favourable tariff treatment to imports from developing countries. In its current form, the EU’s GSP foresees three types of preferential trade arrangements: 1) A general arrangement for developing countries matching certain eligibility criteria, known as the Standard GSP; 2) A special incentive arrangement for sustainable development and good governance or ‘GSP+’; and 3) A special arrangement for least-developed countries, known as the ‘Everything But Arms’ arrangement (hereinafter, EBA). The EU’s current GSP Regulation came into force on 1 January 2014 and was already the result of an important reform. The current GSP Regulation will, for the most part and with the exception of the EBA, expire on 31 December 2023.
Preparing the reform of the GSP and potential areas of reform

In view of the forthcoming expiration of the rules applicable to the Standard GSP and the GSP+, the Commission has initiated a legislative procedure and related reform debate, which is beginning to unfold. Already on 13 May 2019, the Commission had published its Inception Impact Assessment (i.e., Roadmap) on its plan to reform the GSP Regulation. The Inception Impact Assessment is largely informed by the Mid-Term Evaluation of the EU’s Generalised Scheme of Preferences (GSP) (hereinafter, GSP Mid-Term Evaluation), which provides a certain number of directions into which the EU’s GSP scheme could evolve, as well as specific proposals on what improvements could be made.

More specifically, the GSP Mid-Term Evaluation refers to: 1) The GSP’s contribution to beneficiary countries’ export diversification; 2) The GSP’s contribution to sustainable development and good governance; 3) The ability to safeguard the EU’s financial and economic interests; and 4) The environmental impact of trade.

Regarding export diversification, the GSP Mid-Term Evaluation notes that some beneficiary countries are highly diversified at the product level, but not at the sectoral level. In other words, they might be exporting new products, but normally within the same sectors. Therefore, the GSP Mid-Term Evaluation recommended considering extending the product coverage of the GSP and to include selected trade in services categories.

The GSP Mid-Term Evaluation questioned the relevance of the Standard GSP arrangements after 2023 as separate arrangements from the GSP+ and recommended considering the possibility of harmonising the Standard GSP and the GSP+ schemes, which would mean a significant change of approach. In simple terms, this would mean that all GSP beneficiaries may be required to ratify and effectively implement certain international conventions on human and labour rights, environmental protection and good governance. Regarding the latter set of instruments, the GSP Mid-Term Evaluation recommends a review and expansion of the list of applicable international conventions, notably towards including more environmental agreements.

Finally, the GSP Mid-Term Evaluation recommended a review and reform of the safeguard mechanism in the current GSP Regulation, in order to “prevent serious difficulties for European producers as a result of the preferences granted under the GSP”.

On 15 April 2020, the Inception Report for a study in support of the Commission’s impact assessment to prepare the review of the current GSP Regulation was published. According to the Inception Report, the policy options and corresponding research tasks will be divided into 10 tasks. For each task, the economic, social, human rights, environmental, legal, as well as the institutional/procedural impact will be analysed. Of the 10 tasks, five are highlighted as priority tasks, namely: 1) Options for changing the GSP arrangements and beneficiaries (possible ways to harmonise the Standard GSP and GSP+ schemes); 2) Options regarding the GSP product coverage and product graduation. Product graduation refers to the current mechanism, which allows the EU to temporarily suspend preferences in cases where the average value of EU imports of a given product exceeds certain thresholds of the total EU imports of that product from all GSP beneficiaries; 3) Options regarding the handling of the graduation of EBA beneficiaries from LDC status; 4) The international conventions to be covered; and 5) Options regarding the GSP safeguard mechanisms.

The Commission has also launched a public consultation that is supposed to inform the reform process. The public consultation covers questions regarding beneficiary countries, product coverage for the Standard GSP and GSP+ arrangements, product graduation, country graduation, the safeguard mechanisms, the monitoring mechanism, and the withdrawal system for beneficiary countries. The public consultation is open until 3 June 2020.
Implications for businesses

Changes to the EU’s GSP scheme could have important implications for businesses located both in the GSP beneficiary countries and in the EU. For instance, an expansion of the GSP’s product coverage for certain industrial and agricultural products, as well an extension to certain services categories, could be beneficial for businesses in the beneficiary countries. At the same time, this might lead to more competition for EU businesses in relevant sectors. The possible harmonisation of the Standard GSP and GSP+ schemes, as well as the revision and likely expansion of the list of international conventions, might make it more difficult for developing countries to become GSP beneficiaries. Depending on the design of the new rules and the list of the applicable international conventions, the EU reform might lead to a significant reduction in the number of GSP beneficiaries. Most notably, current Standard GSP beneficiaries that have not yet ratified the relevant international conventions would not be able to benefit from the GSP arrangements until they do ratify and effectively implement the conventions to which they are not yet parties. Therefore, the GSP Mid-Term Evaluation suggested a long transition period, so that countries would have sufficient time to do the necessary in order to continue benefiting from the trade preferences.

Time to get involved

The EU’s GSP reform debate is still beginning and the developments in 2020 might be slowed down due to the Covid-19 pandemic. However, a draft regulation is already expected for mid-2021 and a final draft should follow in 2022. The public consultation will be open until 3 June 2020 at midnight Brussels time. All traders and stakeholders should define and communicate their positions now before the legislative process advances to the next phases.

As the African Continental Free Trade Area (AfCFTA) will soon take effect, it is time to take stock of trade within and with Africa

On 1 July 2020, at least 30 States across Africa that have signed and ratified the African Continental Free Trade Area (hereinafter, AfCFTA), intend to commence trade under this comprehensive preferential trade agreement. The AfCFTA will initially cover a market of 1.2 billion people with a combined gross domestic product of about USD 2.5 trillion. On 19 March 2020, Mr. Wamkele Mene was sworn in as Secretary General of the AfCFTA.

The world’s largest free trade area

Once implemented, the AfCFTA will constitute the world’s largest free trade area in terms of the number of participating countries. Its establishment is a “flagship programme” of the so-called ‘Agenda 2063’, which Members of the African Union (hereinafter, AU) had launched in 2013. One of the objectives of the Agenda 2063 is to create “a continental free trade area, an African Customs Union, an African Common Market and an African Monetary Union” as “building blocks towards a continental government by 2063”. The General Objectives stipulated in Article 3 of the AfCFTA include the creation of “a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent” and understand the AfCFTA as “the foundation for the establishment of a Continental Customs Union at a later stage”.

However, the Covid-19 pandemic appears to be disrupting preparations for the AfCFTA’s entry into force and, according to AfCFTA Secretary General Mene, the announcement of a delay is expected any time soon.

The AfCFTA – a framework agreement based on African regional trade agreements

The AU’s ‘Agenda 2063’ originally intended the AfCFTA to be launched in 2018. The AfCFTA is supposed to consolidate a number of existing free trade agreements (hereinafter, FTAs)
concluded between Africa’s different regional economic communities, most notably the so-called Tripartite FTA (TFTA) between the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), and the Southern African Development Community (SADC). The TFTA was scheduled to be finalised by the end of 2014 and then to serve as a basis for the AfCFTA. However, progress on the TFTA was slower than expected and, when it was finally launched in 2015, negotiations were still outstanding on rules of origin, trade remedies and tariff offers. As a consequence, negotiations on the AfCFTA were delayed and began on an incomplete basis.

The negotiations for the AfCFTA were launched in June 2015 and, on 21 March 2018, after 10 negotiating rounds, 44 out of the 55 AU Member States signed the framework agreement establishing the AfCFTA. As provided in Article 8(1) of the AfCFTA, the agreement is designed as an overarching framework agreement integrating a total of six protocols on: 1) Trade in goods; 2) Trade in services; 3) Investment; 4) Intellectual property rights; 5) Competition policy, as well as 6) Rules and procedures on the settlement of disputes. The various protocols refer to a set of annexes, which form integral part of the agreement. For instance, Article 3(2) of the Protocol on Trade in Goods refers to a total of nine annexes: 1) The Schedules of tariff concessions; 2) Rules of origin; 3) Customs cooperation; 4) Trade facilitation; 5) Non-tariff barriers; 6) Technical barriers to trade; 7) Sanitary and phytosanitary measures; 8) Transit; and 9) Trade remedies. With respect to services, the AfCFTA Parties commit to progressively liberalise trade in five priority sectors, namely transport, tourism, business, financial, and communication services.

The AfCFTA framework agreement does not yet include specific obligations regarding trade liberalisation beyond general principles, such as the Most Favoured Nation principle. The Modalities of Tariff Liberalisation, agreed in September 2017, provide that Parties are to establish a list of non-sensitive products covering 90% of tariff lines for which trade is to be fully liberalised within five years upon entry into force (ten years for least developed countries, hereinafter, LDCs), of sensitive products covering 7% of tariff lines to be liberalised within ten years (13 years for LDCs), and of products excluded from tariff liberalisation covering 3% of tariff lines.

The first phase of the negotiations concluded in March 2018 only included the protocols on trade in goods and on trade in services, as well as their annexes. As provided in Article 7 of the AfCFTA, negotiations on investment, intellectual property rights and competition are part of the so-called “Phase II Negotiations”, which were launched in February 2019. The goal was to finalise those negotiations by the end of 2020, but delays due to the Covid-19 pandemic are to be expected. In addition, during the 33rd Ordinary Session of the AU held in Ethiopia in February 2020, it was announced that, following Phase II, there should be a Phase III for the negotiation of an AfCFTA Protocol on e-Commerce.

However, there also remain some Phase I matters to be negotiated, notably the annexes to the Protocol on Trade in Goods related to tariff concessions and rules of origin, respectively. According to AfCFTA Secretary General Mene, at the beginning of March 2020, negotiations on rules of origin were only “90% ready”, as rules on automobiles, sugar, and cotton had not yet been agreed and were still subject to discussions. Originally, these modalities of the agreement were supposed to be finalised at an extraordinary AU summit in May, but the summit is likely to be postponed due to the Covid-19 pandemic.

The AfCFTA framework agreement has already been legally in force since 30 May 2019 for those countries that had deposited their instruments of ratification before this date. According to Article 23(1) of the AfCFTA, the agreement enters into force following “the deposit of the twenty second (22nd) instrument of ratification”, meaning that at least 22 Parties must have ratified the agreement. To this date, the agreement has been ratified by 30 Parties, making this the fastest ratification in the history of the AU. During its 12th extraordinary session in July 2019 in Niamey, Niger, the AU adopted the ‘Niamey Declaration’, which launched the “Operational Phase” of the agreement, setting a timeline for the outstanding negotiations and
stating that the dismantling of tariffs should “start not later than 1 July 2020, to allow the start of trading within the AfCFTA Regime on the same day”.

An EU-AU alliance for free trade?

While States in Africa are on the brink of fundamentally reconfiguring their trade relations, the continent is courted by countries and trading partners around the world, including, inter alia, China, the EU, and the US.

On 9 March 2020, the EU published its communication ‘Towards a comprehensive Strategy with Africa’, a working document to be further elaborated with African counterparts in preparation of the next EU-AU Summit, which is planned to be held in Brussels in October 2020. The EU strategy paper welcomes the establishment of the AfCFTA as strengthening “a stable, rules-based multilateral trading system centred on the World Trade Organisation” and proposes “to share our customs union and single market experience” with the “long-term prospect of creating a comprehensive continent-to-continent free-trade area”. To attain this long-term goal, the EU intends to deepen its existing Economic Partnership Agreements (EPAs) and other EU trade agreements with African States. In December 2019, the AU requested to the WTO to be granted observer status, underlining the AU’s aspiration to make its voice heard in international trade.

However, the outlook of a potential EU-AU alliance for free trade, which the EU may hope for, depends on numerous variables. First of all, it still remains to be seen if the AfCFTA will be successful in increasing intra-African trade. So far, intra-continental trade in Africa only accounts for 15% of total commerce, while it accounts for 70% in Europe. Still, the United Nations Economic Commission for Africa estimates that the AfCFTA could increase intra-African trade by 52%.

With regards to practical implementation, a key challenge, which has been repeatedly highlighted by proponents of the AfCFTA, concerns the development a functioning network of roads, rail and other infrastructure linking the different regions of the continent. The urgent need for infrastructure development may put the EU in a position of strategic rivalry with China, which has shown great readiness to support the building of African ports, roads and railways in the past.

For its part, the US has also initiated discussions to conclude new trade agreements with individual countries in Africa. Most notably, on 17 March 2020, the US Administration notified the US Congress of its intention to negotiate a trade agreement with Kenya, highlighting that such an agreement could “serve as a model for additional trade agreements across Africa”.

Way forward

Even though the AfCFTA framework agreement has already been in force for over a year, this comprehensive project is still ‘work-in-progress’ and trade has not been liberalised yet. In light of the many issues still to be discussed, namely tariff concessions and rules of origin during the Phase I negotiations, as well as the protocols on investment, intellectual property rights, competition and e-commerce during Phases II and III, there is still room for all stakeholders, business operators and business associations, as well as trading partners, to have their say and their interests reflected in the agreement.

New rules on the composition, advertising and marketing of infant and follow-on formula came into force in the EU

and follow-on formula and as regards requirements on information relating to infant and young child feeding came into force. Delegated Regulation (EU) 2016/127 establishes new compositional requirements and further restricts the advertising and marketing of infant and follow-on formula. Manufacturers need to adjust the composition of their products and advertising approaches, in particular on nutrition and health claims.

Infant and follow-on formula under the framework of ‘foods for specific groups’

‘Infant formula’ means “food intended for use by infants during the first months of life and satisfying by itself the nutritional requirements of such infants until the introduction of appropriate complementary feeding”, according to Article 2(2)(c) of Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control. According to Article 2(2)(a) of Regulation (EU) No 609/2013, ‘Infant’ means a child under the age of 12 months. Article 2(2)(d) of Regulation (EU) No 609/2013 defines ‘follow-on formula’ as “food intended for use by infants when appropriate complementary feeding is introduced and which constitutes the principal liquid element in a progressively diversified diet of such infants”.

Regulation (EU) No 609/2013 lays down general compositional and information requirements for different categories of food, including infant formula and follow-on formula. According to Article 11(1) of Regulation (EU) No 609/2013, the Commission was required to adopt specific compositional and information requirements for infant formula and follow-on formula, taking into account the provisions of Commission Directive 2006/141/EC of 22 December 2006 on infant formulae and follow-on formulae and amending Directive 1999/21/EC, which originally laid down harmonised rules on infant formula and follow-on formula in the framework of Directive 2009/39/EC of the European Parliament and of the Council of 6 May 2009 on foodstuffs intended for particular nutritional uses. Directives 2009/39/EC and 2006/141/EC were repealed by Regulation (EU) No 609/2013 (also known as the Regulation on ‘foods for specific groups’), which significantly changed the regulatory framework in the EU for foodstuffs that had been denominated as ‘foodstuffs for particular nutritional uses’ (also known as ‘dietetic foods’ or ‘PARNUTS’, see Trade Perspectives, Issue No. 14 of 12 July 2013).

New compositional requirements

Infant formula and follow-on formula are sophisticated products that are specially formulated for a vulnerable group of consumers. In order to ensure the safety and suitability of such products, detailed requirements must be laid down on the composition of infant formula and follow-on formula, including requirements on energy value, macronutrient (i.e., carbohydrates, fats, fibre, and proteins) and micronutrient (i.e., minerals and vitamins) content. Annex I and II of Delegated Regulation (EU) 2016/127 establish compositional requirements for infant and follow-on formula, taking into account the values for the indispensable and conditionally indispensable amino acids set out in Annex III. These requirements are based on the most recent scientific advice of the European Food Safety Authority (hereinafter, EFSA) in its Scientific Opinion on the essential composition of infant and follow-on formulae, published on 5 August 2014. Notable changes under Commission Delegated Regulation (EU) 2016/127 are the mandatory addition of docosahexaenoic acid (hereinafter, DHA), an omega-3 fatty acid that is a primary structural component of the human brain, cerebral cortex, skin and retina, as recommended by the EFSA. For the addition of DHA, a range of 20-50 milligrams per 100 kilocalories (mg/100 kcal) has been set. Other nutritional changes in the Annexes to Commission Delegated Regulation (EU) 2016/127 include an increase in the maximum levels for alpha-linolenic acid (ALA), and minor increases in the minimum levels of copper, iodine, selenium, sodium, potassium, chloride, vitamin A, vitamin D and folic acid. For other nutrients, such as vitamin B6, biotin, vitamin C and vitamin K, a lower minimum level was set.
Food information requirements and nutrition and health claims

Article 6 of Commission Delegated Regulation (EU) 2016/127 sets out specific requirements on food information. Infant formula and follow-on formula must comply with Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers (hereinafter, FIR) and, in addition to the mandatory particulars listed in Article 9(1) of the FIR, the following are additional mandatory particulars for infant formula: 1) A statement that the product is suitable for infants from birth when they are not breast fed; 2) Instructions for appropriate preparation, storage and disposal of the product, and a warning against the health hazards of inappropriate preparation and storage; and 3) A statement concerning the superiority of breast feeding and a statement recommending that the product be used only on the advice of independent persons having qualifications in medicine, nutrition or pharmacy, or other professionals responsible for maternal and child care.

According to Article 6(2)(c) of Delegated Regulation (EU) 2016/127, the particulars referred to in this point are to be preceded by the words ‘important notice’ (or their equivalent) and are to be provided also in the presentation and advertising of infant formula. Article 6(3) of Delegated Regulation (EU) 2016/127 sets out that, in addition to the mandatory particulars listed in Article 9(1) of the FIR, the following are to be additional mandatory particulars for follow-on formula: 1) A statement that the product is suitable only for infants over the age of six months, that it should form only part of a diversified diet, that it is not to be used as a substitute for breast milk during the first six months of life and that the decision to begin complementary feeding, including any exception to six months of age, should be made only on the advice of professionals responsible for maternal and child care; and 2) Instructions for appropriate preparation, storage and disposal of the product and a warning against the health hazards of inappropriate preparation and storage.

Article 6(6) of Commission Delegated Regulation (EU) 2016/127 provides that the labelling, presentation and advertising of infant formula and follow-on formula must provide the necessary information about the appropriate use of the products, so as not to discourage breast feeding. The labelling, presentation and advertising of infant formula and follow-on formula must not use the terms ‘humanised’, ‘maternalised’, ‘adapted’, or terms similar to them.

As regards the addition of DHA, which is now mandatory, while it had been added voluntarily by manufacturers to infant formula before, under Article 9(3) of Delegated Regulation (EU) 2016/127, the statement ‘contains Docosahexaenoic acid (as required by the legislation for all infant formula)’ or ‘contains DHA (as required by the legislation for all infant formula)’ may only be used for infant formula placed on the market before 22 February 2025. Such a statement could be interpreted as self-evident misleading advertising under Article 7(1)(c) of the FIR, since all manufacturers are now required to add DHA and a statement ‘contains DHA’ would be nothing special (see in relation to the legal concept of self-evident misleading advertising, Trade Perspectives, Issue No. 4 of 20 February 2015).

Article 7 of Commission Delegated Regulation (EU) 2016/127 provides for specific requirements on the nutrition declaration in addition to the information referred to in Article 30(1) of the FIR, for example, the declaration for infant formula and follow-on formula may be supplemented with one or more of the following: 1) The amounts of components of protein, carbohydrate or fat; and 2) The whey protein/casein ratio.

Finally, Article 8 of Commission Delegated Regulation (EU) 2016/127 prohibits the use of nutrition and health claims for infant formula due to the particular role of infant formula in the diet of infants. Nutrition and health claims are promotional tools that are used on a voluntary basis by food business operators in commercial communication, in line with the rules of Regulation (EC) No 1924/2006 of the European Parliament and of the Council on nutrition and health claims. Therefore, for example, infant formula may not be linked to breast milk, immune or gut health benefits, in either the presentation, labelling or advertising. Although a small number of nutrition claims (for example on the addition of the following ingredients: taurine,
fructo-oligosaccharides and galacto-oligosaccharides, nucleotides) and one health claim (on the reduction of risk to allergy to milk proteins) were permitted on infant formula under Directive 2006/141/EC, these will no longer be permitted under Delegated Regulation 2016/127.

**International Principles and Standards**


**Entry into force**

According to Article 14 of Commission Delegated Regulation (EU) 2016/127, the Regulation applies since 22 February 2020, except in respect of infant formula and follow-on formula manufactured from protein hydrolysates, to which it will only apply from 22 February 2021. Manufacturers need to adjust the composition of their products and labelling and advertising approaches, in particular on nutrition and health claims. Interested stakeholders are advised to carefully monitor developments on infant formula and follow on formula and to seek adequate legal advice in order to ensure that the respective products comply with the new compositional and food information requirements.

**Recently Adopted EU Legislation**

**Trade and Customs Law**

- Notice to economic operators – New round of requests for the suspension of the autonomous Common Customs Tariff duties on certain industrial and agricultural products

- Commission Implementing Regulation (EU) 2020/568 of 23 April 2020 making the exportation of certain products subject to the production of an export authorisation


- Decision No 1/2018 of the Joint Veterinary Committee set up by the Agreement between the European Community and the Swiss Confederation on trade in agricultural products of 12 June 2018 on amending Appendix 6 of Annex 11 to the Agreement [2020/554]
Trade Remedies

- Commission Implementing Regulation (EU) 2020/527 of 15 April 2020 re-imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India as regards Jindal Saw Limited following the judgment of the General Court in T-301/16

- Commission Implementing Regulation (EU) 2020/526 of 15 April 2020 re-imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India as regards Jindal Saw Limited following the judgment of the General Court in T-300/16

Food and Agricultural Law

- Commission Implementing Regulation (EU) 2020/567 of 22 April 2020 amending Regulation (EC) No 1484/95 as regards fixing representative prices in the poultrymeat and egg sectors and for egg albumin

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