FRATINIVERGANO
EUROPEAN LAWYERS
TRADE PERSPECTIVES©

Issue No. 12 of 19 June 2020

The European Commission continues to move its trade agenda forward, despite the challenges due to the *Covid-19* pandemic

In June 2020, the European Commission (hereinafter, Commission) published its *Report of the 7th round of negotiations for a Free Trade Agreement between the European Union and Australia* and its *Report on the 7th round of negotiations between the EU and Chile for the Modernisation of the trade part of the EU Chile Association Agreement*. Additionally, on 8 June 2020, the Parliament of Viet Nam ratified the EU-Viet Nam Free Trade Agreement (hereinafter, FTA), which clears the path for the agreement to enter into force on 1 August 2020. The progress made by the EU in those negotiations, as well as in other trade negotiations, such as those with the UK and with New Zealand, demonstrates that the EU is succeeding in moving its trade agenda forward despite current challenges due to the *Covid-19* pandemic.

Negotiations have largely resumed via video conferences

Since earlier this year, the *Covid-19* pandemic has significantly affected public life and global travel. International trade negotiations largely came to a halt and only slowly resumed in April via video conferences, as travel restrictions and social distancing requirements still render large gatherings and physical meetings impossible. While several countries started a process of easing domestic restrictions, travel restrictions remain in place and home office remains the rule almost everywhere. Therefore, EU trade negotiations still continue to be held via video conferences.

From 8 to 19 June 2020, the 8th round of negotiations of the EU-New Zealand FTA was held via video conferences. Prior to the 8th round, the EU submitted to New Zealand an offer on dairy products, which is considered a sensitive issue. Another sensitive sector is meat, for which the market access offers are not publicly available. On 8 June 2020, New Zealand's Minister for Trade and Export Growth *David Parker* stated that the EU's offer for dairy and meat products was not acceptable. New Zealand had previously indicated that it would only agree to the EU's demands regarding the protection of geographical indications (hereinafter, GIs), if the EU's market access offer corresponded to New Zealand's interests. On 28 April 2020, the EU and Mexico announced the conclusion of the revised EU-Mexico Global Agreement. The trade part of the modernised agreement will significantly increase market access, notably for agro-food products and for Government procurement and also address novel issues such as animal welfare and antimicrobial resistance, anti-corruption, and digital trade (see *Trade Perspectives*, Issue No. 9 of 8 May 2020).

The EU-Australia trade negotiations move ahead

In June 2020, the Commission published its report on the 7th round of the EU-Australia trade negotiations, which was held from 4 to 20 May 2020. The EU and Australia launched negotiations on 18 June 2018 and intend to conclude negotiations by the end of this year.

The negotiations of the most recent round were conducted during more than 50 video conferences. According to the report, regarding trade in goods, both sides discussed and explained details of their market access offers, which had been exchanged in October 2019. The report states that both parties discussed general provisions on rules of origin, origin procedures and product specific rules for some sectors and notes that progress was made on general provisions and origin procedures. The report notes that, regarding the chapter on technical barriers to trade, discussions focused on conformity assessment, "*including the update of the existing Mutual Recognition Agreement*". Additionally, the report states that the EU had explained "*its recent proposal on cooperation on market surveillance and safety of non-food products*".

Negotiations between the EU and Australia appear to continue advancing at a good pace. However, discussions on sensitive issues, such as GIs, are ongoing and have yet to lead to mutual agreement. The issue of GIs remains controversial (see *Trade Perspectives*, Issue No. 17 of 20 September 2019) and the report on the most recent round notes that, on this matter, the discussions mainly focused "*on the opposition grounds to the protection of a number of EU GI names, based on files prepared by Australia*". Another potentially difficult area is the one of trade in meat and agricultural products. In February 2020, Australia's Minister for Trade, Tourism and Investment *Simon Birmingham* had stated that Australia aimed at securing an agreement that would provide significantly improved access for Australian farmers into the EU market. The 8th round of negotiations is supposed to take place in September 2020 and the format of that round, either virtually or in person, will depend on the developments of the *Covid-19* pandemic.

The EU-Chile trade negotiations

On 9 June 2020, the Commission published its report of the 7th round of the EU-Chile trade negotiations, which was held from 25 to 29 May 2020 via video conferences. The EU and Chile launched negotiations to modernise the existing EU-Chile Association Agreement in November 2017 and intend to conclude negotiations by the end of 2020 or the beginning of 2021.

The report states that both parties made good progress in a significant number of chapters, "*including parts of the Services Chapter, Rules of Origin, Technical Barriers to Trade, Good Regulatory Practices, Public Procurement, Institutional provisions and some IPR provisions. The useful progress in chapters on SPS, Transparency, Anticorruption and Customs and Trade Facilitation have as a result that these chapters are now very well advanced*". With respect to trade in goods, the report notes that the parties continue their exchange of textual proposals. However, although discussions were constructive, the report notes that further exchanges are necessary on "*remanufactured goods, origin marking and on the EU text on the preference margin for the elimination of customs duties*". Regarding rules of origin, the report states that the parties made further progress, particularly concerning origin procedures. Additionally, the report states that discussions on product-specific rules were advancing well and "*with tentative solutions in several sectors*". With respect to the Chapter on Technical Barriers to Trade, further discussions will be necessary on issues such as conformity assessment and regulatory cooperation. With respect to the Chapter on Sanitary and Phytosanitary Measures, more discussions are necessary concerning the issues of cooperation on animal welfare and antimicrobial resistance, multilateral *fora*, and food science. Regarding GIs, the report states that both parties resumed discussions on the EU text proposal, but that further work on this matter is needed.

The 8th round of negotiations is supposed to take place in September 2020, but a specific date and the format of the negotiations has yet to be announced.

EU-UK trade negotiations: No extension of the transition period

On 15 June 2020, a high-level meeting between UK Prime Minister *Boris Johnson*, the President of the European Council *Charles Michel*, the President of the European Commission *Ursula von der Leyen*, and the President of the European Parliament *David Sassoli*, was held via video conference, at which the UK's decision not to request any extension to the transition period was confirmed. On 12 June 2020, during a meeting of the EU-UK Joint Committee, the UK Minister for the Cabinet Office, *Michael Gove*, officially announced that the UK would not seek to extend the transition period beyond 31 December 2020. The EU and the UK agreed on the next steps for the negotiating calendar. Both parties presented an '*Addendum to the Terms of Reference on the UK-EU Future Relationship Negotiations*', which provides for intensified negotiations over the months of July and August. The next round of negotiations is supposed to take place from 29 June to 3 July 2020.

EU-Viet Nam to enter into force in August 2020

On 8 June 2020, the Parliament of Viet Nam ratified the EU-Viet Nam FTA and the EU-Viet Nam Investment Protection Agreement. On the same day, the Parliament of Viet Nam also ratified the International Labour Organisation's Core Convention against Forced Labour. The EU-Viet Nam Trade Agreement had already been ratified by the European Parliament and the Council of the EU. It is expected that the agreement will enter into force on 1 August 2020. The EU-Viet Nam Investment Protection Agreement will only enter into force once all EU Member States have ratified it.

The EU-Viet Nam FTA reinforces the EU's engagement with Southeast Asia and contributes to the strengthening of the EU's cooperation with the Association of Southeast Asian Nations (hereinafter, ASEAN), aimed at closer trade and investment relations between the two regions. Following the EU-Singapore FTA, the EU-Viet Nam FTA is the second agreement concluded between the EU and an ASEAN Member State.

The way forward

Several ongoing trade negotiations conducted by the EU are well advanced and might be concluded by the end of the year. Therefore, all traders and stakeholders should define their positions and engage with negotiators, as this could be the last chance to have leverage regarding the outcome of the various trade negotiations.

The Government of Indonesia imposes new safeguard tariffs on the imports of textile products, including curtains, interior blinds, fabrics, and yarns

On 27 May 2020, Indonesia enacted safeguard measures for textiles and textile products regulated under *Minister of Finance Regulation* (*PMK) No. 54/PMK.010/2020, PMK No. 55/PMK.010/2020,* and *PMK No. 56/PMK.010/2020.* Notified to the World Trade Organization (hereinafter, WTO) on 3 June 2020, the regulation introduced new safeguard tariffs for the imports of certain textile products, *inter alia,* curtains, yarns, interior blinds and bed valances for the period from May 2020 to November 2022. According to Indonesia's Minister of Finance *Sri Mulyani,* the regulations are intended to protect Indonesia's domestic upstream from a recent surge in imports of the aforementioned products.

Safeguard measures under the multilateral trading system

Under WTO rules, a safeguard is a form of trade remedy, in addition to anti-dumping and countervailing measures, provided under Article XIX of the General Agreement on Tariffs and Trade, and further detailed in the WTO Agreement on Safeguards (hereinafter, SG Agreement). Article 2 of the SG Agreement states that a WTO Member may impose safeguard

measures to protect its domestic industries from a surge of imported products causing, or threatening to cause, serious injury to the industry. The provision also requires such measures to be applied in compliance with the most-favoured nation (hereinafter, MFN) principle. Safeguards can take several forms, such as, *inter alia*, a suspension of concessions or obligations by means of quantitative import restrictions or increased import duties above the bound tariff rates.

Unlike anti-dumping or countervailing measures, which are applied against '*unfair trade practices*', safeguards are applied to '*fair trade*'. Therefore, the threshold for determining an injury is higher and, in some cases, it requires compensation of exporting countries. A certain number of requirements must be fulfilled in order to invoke a safeguard measure: 1) An increase in imports, which must be recent, sharp, sudden, and significant; 2) The existence of an '*unforeseen development*'; and 3) The existence of a '*causal link*' between the increased imports of the relevant product and the serious injury or threat thereof. Article 3 of the SG Agreement specifies that, before a safeguard measure may be imposed, an investigation must be conducted by the competent authorities.

In accordance with Article 7 of the SG Agreement, the imposition of a safeguard measure must remain temporary and provide for progressive liberalisation. The maximum duration of a safeguard measure is four years, but may be extended for another four years, provided that the domestic industry is adjusting and that the measure be progressively liberalised, while developing countries may maintain the safeguards for an additional two years. Additionally, Article 9 of the SG Agreement obliges WTO Members applying safeguard measures to adopt all reasonable measures to exclude developing countries with an individual share of imports below 3%, provided that the share of developing countries collectively does not account for more than 9% of total imports.

Investigations of certain textile products since 2019 in Indonesia

Indonesia's authority in charge of conducting safeguard investigations is the Indonesian Trade Safeguard Committee (*i.e.*, *Komisi Pengamanan Perdagangan Indonesia*, hereinafter, KPPI). On 12 September 2019, the Indonesian Textile Association (hereinafter, API) as the representative of approximately 70 domestic textile companies submitted three applications to the KPPI to conduct investigations on increased imports of certain textile products (the list of products is provided in *PMK No. 54/PMK.010/2020, PMK No. 55/PMK.010/2020,* and *PMK No. 56/PMK.010/2020*), including yarns, fabrics, and curtain products. Following the API's application, the KPPI initiated three simultaneous investigations from 18 September 2019 until 27 May 2020. The final report of the investigations shows that all the requirements for imposing a safeguard measure, namely the elements of unforeseen development, increased imports, and a causal link between the increased imports and the serious injury or threat thereof, have been met.

With respect to curtains, interior blinds, bed valances, and other furnishing articles, the KPPI refers to the Indonesia's Central Statistical Agency (*i.e.*, *Badan Pusat Statistik*, hereinafter, BPS) findings that, from 2016 to 2018, the volume of imports of these products had continued to increase by approximately 147%. The biggest shares of these imports originated in China (2.263 metric tonnes, or 90,53%) and Singapore (91 metric tonnes, or 3,64%).

Secondly, imports of fabrics also experienced an absolute increase since 2016. With imports amounting to 238,219 metric tonnes in 2016, the number increased to 413,813 metric tonnes in 2018. The biggest shares of the imports originated in China (280.815 metric tonnes, or 67,86%), Korea (45.799 metric tonnes, or 11,07%), Hong Kong (27.994 metric tonnes, or 6,76%), and Taiwan (23.399 metric tonnes, or 5,65%).

Thirdly, the imports of yarn (other than sewing thread) of synthetic and artificial staple fibres appear to have experienced a decline from January to June 2018 vis-à-vis 2019. Still, the trend for the past four years from 2016 to 2019 shows that there was a significant increase of imports of 18,06%. The biggest shares of imports originated in China (14.104 metric tonnes, or

67,42%), Thailand (2.697 metric tonnes, or 12,89%), Turkey (1.575 metric tonnes, or 7,53%), Viet Nam (1.050 metric tonnes, or 5,02%), and India (659 metric tonnes, or 3,15%).

According to the KPPI's reports, the surge in these imports were caused by an unforeseen development, particularly the overproduction of textile products in China for the period from 2015 to 2017, increased investment and additional fixed assets in the fabric industry in China from 2016 to 2018, as well as the consequences of the '*trade war*' between the US and China since 2018. Previously, *Moody's Investors Service*, a leading provider of credit ratings, research, and risk analysis, predicted that the '*trade war*' could potentially lead to an influx of Chinese yarn, fabric, and garments into Indonesia, thereby flooding the Indonesian textile market with supplies, causing a threat of serious losses to the domestic Industry. Tariffs imposed by the US on Chinese textile exports stand at 25%, compared to the 10 to 15% applied under the Association of Southeast Asian Nation (ASEAN) – China Free Trade Agreement. *Moody*'s prediction has, in fact, been confirmed by the result of KPPI's investigations.

This trend has the potential of significantly harming Indonesia's domestic producers. Negative effects for producers of curtains, interior blinds, bed valances, and other furnishing articles are highlighted by several indicators, such as a continuing decline of domestic production by approximately 24% in the past two years, an increase in the volume of unsold goods by 6%, and a decrease in profits by 480%. Similar trends affect producers of fabrics and yarns.

Safeguards tariffs to be imposed in three periods starting from 2020 to 2022

Based on the result of KPPI's safeguard investigations, Indonesia's Ministry of Finance decided to introduce import safeguard tariffs for the period from May 2020 to November 2022. According to the PMK, the import tariffs would be added to either MFN tariffs or the applicable preferential tariffs. On the basis of Article 2 of *PMK 54/PMK.010/2020*, for curtains, interior blinds, bed valances, and other furnishing articles under the Harmonized System's (hereinafter, HS) codes 6303.12.00, 6303.19.90, 6303.91.00, 6303.92.00, 6303.99.00, 6304.19.90, 6304.91.90 and 6304.92.00, the following safeguard tariffs apply: Period I from 27 May 2020 to 8 November 2020: Indonesian rupiah (hereinafter, IDR) 1.405/kg; Period II from 9 November 2020 to 8 November 2021: IDR 1.192/kg; and Period III from 9 November 2021 to 8 November 2022: IDR 979/kg.

Under *PMK 55/PMK.010/2020*, fabrics under 107 HS codes, including HS codes 5211.19.00, 5211.20.00 (*e.g.*, filament, cotton, knitted and staple fabrics), are subject to the following safeguard tariffs: Period I from 27 May 2020 to 8 November 2020: IDR 1.538 to IDR 11.426/meter; Period II from 9 November 2020 to 8 November 2021: IDR 1.484 to IDR 11.023/meter; and Period III 9 November 2021 to 8 November 2022: IDR 1.432 to IDR 10.635/meter.

Finally, under *PMK No. 56/PMK.010/2020*, which applies to HS codes 5509.22.00, 5509.32.00, 5509.51.00, 5509.53.00, 5510.12.00, and 5510.90.00 (*e.g.*, dyed fabrics and woven containing less than 85% by weight of artificial staple fibres, multiple folded or cabled yarn, of synthetic staple fibres, containing 85% or more by weight of polyester) the following safeguard tariffs apply: Period I from 27 May 2020 to 8 November 2020: IDR 41.083/kg; Period II from 9 November 2020 to 8 November 2021: IDR 34.961/kg; and Period III from 9 November 2021 to 8 November 2022: IDR 28.839/kg.

Exemptions and likely effects

In accordance with Article 3 of the SG Agreement, the KPPI held a public hearing to provide an opportunity for relevant stakeholders to submit evidence and comments. At the public hearing, various countries, such as Turkey, Thailand, Mexico, Viet Nam, India and Hong Kong provided their view and concerns, mostly requesting Indonesia to exempt them from the safeguard tariffs. While safeguard measures must be applied based on the MFN principle, special and differential treatment under Article 9 of the SG Agreement requires WTO Members not to apply a safeguard measure against products originating in developing countries whose

individual exports are below a 3%, provided that the share of developing countries collectively does not account for more than 9% of total imports.

According to *PMK No. 56/PMK.010/2020* applicable to yarns, a number of countries are exempt from the safeguard tariffs, *inter alia,* Brunei Darussalam, Myanmar, Hong Kong, Cambodia, Bangladesh, Taiwan, and the Philippines. During the KPPI's public hearing, the Government of Taiwan, for instance, argued that the losses suffered by Indonesia were not caused by yarns imported from Taiwan. The Government of Indonesia decided to exempt Taiwan from the safeguard tariff, as its share of relevant imports into Indonesia is below 3%. The countries that are most likely to see a negative impact of the safeguard tariffs on yarns are China, Thailand, Turkey, Viet Nam, and India. According to *PMK No. 55/PMK.010/2020*, a number of countries, including Mexico, Turkey, Thailand, India, and the Philippines, are exempt from the safeguard tariffs for fabrics, as they are developing countries within the meaning of Article 9.1 of the SG Agreement. Countries that will be greatly impacted by the safeguards are China, Korea, and Hong Kong. Under *PMK No. 54/PMK.010/*2020 and with respect to curtains, interior blinds, bed valances, and other furnishing articles, *inter alia,* Mexico, Thailand, Turkey, Korea, and the Philippines are exempt, while China and Singapore, as the biggest exporters of such products to Indonesia, are likely to be greatly impacted.

More safeguards may be forthcoming

Since 2018, there has been a sharp increase in imports of various textiles and textile products into Indonesia. Consequently, the Government of Indonesia has imposed safeguard measures as a response to these increasing imports. Most recently, on 10 June 2020, the KPPI launched an investigation regarding a surge in imports of textile products, including carpets and other textile coverings. It is likely that such other ongoing investigations will also lead to the imposition of safeguard tariffs on the relevant products. In case of concerns regarding certain aspects of Indonesia's safeguard measures or the underlying investigation, affected trading partners could consider challenging the measures through WTO dispute settlement. All relevant stakeholders, in particular in the textile sector, should closely monitor the developments related to Indonesia's safeguards in order to adjust to any future changes.

Evaluation of the EU's Nutrition and Health Claims Regulation: incomplete implementation and a lack of harmonisation in the area of plants used in food

On 20 May 2020, the European Commission (hereinafter, Commission) published the evaluation of *Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods* (hereinafter, NHCR) under the Commission's Regulatory Fitness and Performance (hereinafter, REFIT) Programme, which aims at consolidating better law-making procedures, simplifying EU law and reducing administrative and regulatory burdens. The NHCR governs the use of nutrition and health claims in the labelling, presentation, and advertising of foodstuffs marketed in the EU. As part of the REFIT evaluation, gaps in the NHCR were found to arise from the non-implementation of nutrient profiles, in relation to health claims on plants and their preparations, and from the non-harmonised nature of the current general regulatory framework applicable to plants and their preparations used in foods.

EU regulatory framework on nutrition and health claims

The NHCR establishes rules that food business operators in the EU must follow when they intend to advertise a particular beneficial effect of their product in relation to nutrition or health. The objective of the NHCR is to ensure that any claim made in the presentation or advertising of foodstuffs marketed in the EU is clear, accurate, and based on scientific evidence. According to Article 2(5) of the NHCR, a health claim means "*any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health*". According to Article 2(4) of the NHCR, a nutrition claim means any statement suggesting or

implying that a food has particular beneficial nutritional properties due to: 1) The energy it provides, provides at a reduced or increased rate, or does not provide; and 2) The nutrients or other substances it contains, contains in a reduced or increased proportion, or does not contain.

The REFIT evaluation

Since its adoption in 2006, the NHCR has remained incomplete. The REFIT evaluation, published in May 2020 alongside the EU's Farm to Fork strategy (see *Trade Perspectives*, Issue No. 10 of 22 May 2020), focuses on nutrient profiles and on health claims on plants and their preparations and on the general regulatory framework for their use in foods.

The Commission's inaction on nutrient profiles

On the basis of Article 4(1) of the NHCR, the Commission was required to adopt, by 19 January 2009, "*specific nutrient profiles, including exemptions, which food or certain categories of food must comply with in order to bear nutrition or health claims and the conditions for the use of nutrition or health claims for foods or categories of foods with respect to the nutrient profiles*" (see *Trade Perspectives*, Issue No. 12 of 17 June 2016). In simple terms, nutrient profiles are thresholds of nutrients (*i.e.*, maximum levels of nutrients, such as saturated fats, salt and/or sugars) above which nutrition claims are restricted and health claims are prohibited. The objective of such nutrient profiles is to avoid a situation in which nutrition or health claims would mask the overall nutritional values of a food product, which could mislead consumers when trying to make healthy choices. In that respect, the REFIT evaluation concludes that the specific objective pursued by nutrient profiles, which is to prevent a positive health message on foods that are high in fats, sugars and/or salt content, is still relevant today, as in the absence of nutrient profiles consumers continue to be exposed to foods bearing claims, but which are in fact high in fats, sugars and/or salt. The REFIT evaluation further concludes that a "*level playing field between food operators has not been achieved because some operators have reformulated their products, possibly in preparation for the establishment of nutrient profiles, while other operators have not, creating unfair competition*".

Although consumer associations such as the European Consumers Organisation (BEUC), the European Public Health Alliance (EPHA) and the European Hearth Network (EHN) have been regularly advocating for the adoption of nutrient profiles since 2009, policymakers in several EU Member States, including Germany and Italy, have strongly opposed the introduction of nutrient profiles by the Commission given the high controversy of the topic.

Legal uncertainties on plants and their preparations

The REFIT evaluation notes that plants and their preparations are widely available on the EU market as foods and herbal medicines, and that their classification as "*food*" or "*medicine*" falls under the responsibility of EU Member States. Consequently, it is possible that plant products be classified as "*food*" in one EU Member State and as "*medicine*" in another EU Member State.

The REFIT evaluation notes that the use of plants and their preparation used in food is governed by general EU rules, notably established by *Regulation (EC) 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, and specific national rules. According to the evaluation *"Nineteen EU Member States have adopted national legislation on plants used as foods, mainly through lists of authorised or banned plant substances*".

The issue of health claims for botanicals

Only the use of health claims on plants as foods is specifically harmonised at the EU level by the NHCR. The NCHR establishes that health claims made on foods, including plants, are only

to be authorised after a scientific assessment of the highest possible standard is conducted by the European Food Safety Authority (hereinafter, EFSA). The REFIT evaluation recalls that, in 2009, in the context of the scientific assessment for the establishment of the list of permitted '*health claims other than those referring to the reduction of disease risk*' falling under Article 13 of the NHCR, no health claim on plant substances used in foods (also referred to as "*botanicals health claims*") received a favourable assessment by the EFSA, which led to a suspension of the authorisation procedure (see *Trade Perspectives*, Issue No. 14 of 10 July 2015). The REFIT evaluation notes that, in 2012, "*the Commission established an 'on-hold' list of 2,078 health claims relating to plant substances, which may still be used on the EU market under the responsibility of the food business operators provided that they comply with the general principles and conditions of the Claims Regulation and the relevant national provisions, pending a final decision*".

The findings of the REFIT evaluation "*show that in the current situation consumers continue to be exposed to unsubstantiated health claims from the on-hold list and may believe that the beneficial effects communicated with the on-hold claims have been scientifically assessed and risk managed, whilst this is not the case*". On the other hand, according to the REFIT evaluation, food business operators "*have benefited from the current situation, as they have been able to continue using health claims on plant substances without having to undertake clinical trials to support the application for health claims. The pharmaceutical industry claims to face higher production and regulatory costs than food business operators producing food supplements that contain the same plant substances and can bear similar health claims, without being subject to the same requirements*".

Non-harmonised legal framework of plants and their preparations used in food

In relation to the general legal framework of plants and their preparations used in food, the REFIT evaluation concludes that the safety of foods containing plants is sufficiently guaranteed "*by the EU general rules on food safety, the existing national rules and, where necessary, the use of the Article 8 procedure of the Fortified Foods Regulation, which assesses the safety of certain plant substances in foods which represent a potential risk to consumers*". The REFIT evaluation further concludes that "*The fact that nineteen Member States have adopted national rules to address the issue of safety and that there is an increasing demand from Member States to use the Article 8 procedure suggest that plant substances used in food may give rise to adverse health effects and would merit a closer and more systematic scrutiny*". Importantly, the REFIT evaluation comes to the conclusion that the "*absence of a harmonised EU regulation on the use of plants in foods has mainly negative impacts for food business operators, particularly on product innovation and on the possibility to market the same product simultaneously in multiple Member States*". The REFIT evaluation recommends "*that the classification 'food' versus 'medicine' would remain under the remit of Member States*", but that "*EU harmonisation on plants used in foods through a positive or a negative list of plants would improve the situation with regard to safety and the smooth functioning of the internal market*".

Towards legislative initiatives on nutrient profiles and plants used in foods?

The REFIT evaluation finds that establishing nutrient profiles is still useful in order to pursue the objective of the NHCR. For this reason, defining an EU strategy on nutrient profiles, as envisaged by the EU's Farm to Fork strategy for the fourth quarter of 2022, will certainly contribute to restricting the promotion of foods that are high in fat, salt and sugars and to establishing a level playing field for food business operators. In the Farm to Fork Strategy, the Commission also announced that, in the fourth quarter of 2021, it would launch initiatives to stimulate the reformulation of processed foods, facilitating the shift to healthier diets. Nutrient profiles will be relevant for that initiative. After more than ten years and the development of several nutrition policies aimed at improving public health across the EU, and the inclusion of this tool in the Farm to Fork Strategy, it appears that EU Member States may have become less reluctant in relation to the concept of EU-wide nutrient profiles. In relation to health claims made on plant substances, the REFIT evaluation finds that the NHCR does not consider the specific situation of plants and preparations of plants that have a history of traditional use, and

suggests to explore the *traditional use* procedure in the efficacy assessment to address the situation of health claims on plants and their preparations used in foods. Food business operators wishing to commercialise their food products, particularly if containing plants and/or preparations of plants in the EU, are advised to seek expert legal advice in order to correctly interpret the EU legislation on claims and to avoid the additional costs generated by the identified regulatory burdens.

Recently Adopted EU Legislation

Trade and Customs Law

- *Commission Regulation (EU) 2020/797 of 17 June 2020 amending Regulation (EU) No 142/2011 as regards requirements for animal by-products and derived products originating from, and returning to, the Union following refusal of entry by a third country*

- *Commission Implementing Regulation (EU) 2020/750 of 5 June 2020 establishing a procedure for extending the transition period provided for in Implementing Regulation (EU) 2015/2447 for the application of the registered exporter system in some beneficiary countries of the Generalised System of Preferences*

Food and Agricultural Law

- *Commission Regulation (EU) 2020/856 of 9 June 2020 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for cyantraniliprole, cyazofamid, cyprodinil, fenpyroximate, fludioxonil, fluxapyroxad, imazalil, isofetamid, kresoxim-methyl, lufenuron, mandipropamid, propamocarb, pyraclostrobin, pyriofenone, pyriproxyfen and spinetoram in or on certain products*

- *Commission Implementing Regulation (EU) 2020/786 of 15 June 2020 amending and correcting Regulation (EC) No 1235/2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries*

- *Commission Regulation (EU) 2020/770 of 8 June 2020 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for myclobutanil, napropamide and sintofen in or on certain products*

- *Commission Regulation (EU) 2020/763 of 9 June 2020 amending the Annex to Regulation (EU) No 231/2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards specifications for tricalcium phosphate (E 341 (iii))*

- *Commission Regulation (EU) 2020/749 of 4 June 2020 amending Annex III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for chlorate in or on certain products*

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