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### **The EU's updated strategy for an 'Open, Sustainable and Assertive Trade Policy'**

On 18 February 2021, the European Commission (hereinafter, Commission) published its Communication on the EU Trade Policy Review titled '*Trade Policy Review - An Open, Sustainable and Assertive Trade Policy*', which sets out the Commission's agenda on trade for the coming years. The Communication is complemented by an Annex on '*Reforming the WTO: Towards a sustainable and effective multilateral trading system*'. The Communication underlines the EU's strong emphasis on its sustainability commitments towards the environment, climate change, deforestation, and labour rights in the context of its trade policy. The Communication refers to existing EU policies, but also discusses new elements that will be introduced in future trade negotiations, such as the intention to include a chapter on the concept of '*sustainable food system*' in trade agreements. The new trade policy strategy will have an impact on EU trade negotiations and on how trade with the EU is conducted.

#### ***The path towards an updated trade policy strategy***

In June 2020, the Commission launched a comprehensive review of the EU's trade policy, aiming at setting a "*fresh medium-term direction for EU trade policy, responding to a variety of new global challenges and taking into account the lessons learned from the coronavirus crisis*". In the summer of 2020, the Commission had opened a public consultation regarding the review of the EU's trade policy and also engaged with the European Parliament, businesses, and civil society to gather input for the review of the EU's trade policy.

#### ***The growing importance of social and environmental commitments***

In recent times, EU trade policy has been undergoing significant changes. In its '*Trade for all - Towards a more responsible trade and investment policy*' strategy, published in October 2015, the previous Commission had started placing greater emphasis on labour rights and environmental matters. These issues have become important factors in the context of the EU's trade agreements. The issue of sustainability and the chapters on Trade and Sustainable Development in preferential trade agreements (hereinafter, PTAs) negotiated by the EU and its trading partners are now important parts of trade negotiations and trade agreements and, at the same time, an important aspect of the EU's efforts to regain public support for its trade policy.

## **An ‘Open, Sustainable and Assertive Trade Policy’**

When the Commission published its Communication on the EU’s ‘*Open, Sustainable and Assertive Trade Policy*’ strategy, European Commissioner for Trade *Valdis Dombrovskis* stated that “*the challenges we face require a new strategy for EU trade policy. We need open, rules-based trade to help restore growth and job creation post-COVID. Equally, trade policy must fully support the green and digital transformations of our economy and lead global efforts to reform the WTO*”. Additionally, Commissioner for Trade *Dombrovskis* stated that the EU’s new trade policy strategy should provide the EU with “*the tools to defend ourselves when we face unfair trade practices*”.

The Communication is structured in four parts: 1) European Trade Policy at a time of economic transformation and geopolitical instability: preparing for the world of 2030; 2) A trade policy that supports the EU’s open strategic autonomy; 3) Medium term direction of trade policy; and 4) Supporting an informed discussion on trade policy. The Communication is complemented by an Annex that focuses solely on the importance of reforming the World Trade Organization (hereinafter, WTO) and the relevance of sustainability in the multilateral trading system.

The first two parts of the Communication provide a rather philosophical analysis, noting that trade had changed. This change is due to various factors, namely increasing global uncertainty, growing unilateralism, the rise of China, digital transformation and technological evolution, together with an increased role of services in the economy and, in the past year, also the impact of the *Covid-19* pandemic. Therefore, the EU Communication states that the EU needs to adapt to this change and commit to an ‘*open strategic autonomy*’. According to the Communication, ‘*open strategic autonomy*’ refers to “*the EU’s ability to make its own choices and shape the world around it through leadership and engagement, reflecting its strategic interests and values*”.

Part three of the Communication provides the actual update to the EU’s trade policy strategy. The Communication notes three core objectives: 1) “*Supporting the recovery and fundamental transformation of the EU economy in line with its green and digital objectives*”; 2) “*Shaping global rules for a more sustainable and fairer globalisation*”; and 3) “*Increasing the EU’s capacity to pursue its interests and enforce its rights, including autonomously where needed*”. The Communication points out six critical areas to achieve the “*EU’s objectives in the medium term*”: 1) Reform the WTO; 2) Support the green transition and promote responsible and sustainable value chains; 3) Support the digital transition and trade in services; 4) Strengthen the EU’s regulatory impact; 5) Strengthen the EU’s partnerships with neighbouring, enlargement, and African countries; and 6) Strengthen the EU’s focus on implementation and enforcement of trade agreements, ensuring a level playing field.

Regarding WTO reform, the Communication and its Annex state that the EU would work to move forward the transformation of the WTO and to restore trust in the multilateral trading system. Focusing on the WTO’s contribution to sustainable development, the EU intends to work with like-minded WTO Members to move forward the initiative on trade and climate, as well as enhancing the cooperation between WTO and the International Labour Organization (ILO). More specifically, the EU seeks to work towards the restructuring of the WTO Dispute Settlement Body, including a reform of the Appellate Body, and seeks to restore the effectiveness and credibility of the WTO as a *forum* for the negotiation of trade rules and further liberalisation. The Annex notes that the priority should be to modernise the rules of the WTO on “*e-commerce, investment facilitation, services domestic regulation and on the role of the state in the economy, including on subsidies*”. Finally, the EU will seek to improve the monitoring of the WTO Members’ international trade policies, noting that the WTO “*Director-General and the Secretariat in particular can reinforce the monitoring and deliberation functions of the WTO*”.

With respect to trade agreements, the Communication underlines the EU’s commitment to reinforce its engagement with countries in Africa, as well as to deepen trade and economic

relations with the Western Balkan countries. Additionally, the Communication underlines the EU's commitment to reinforce its regulatory dialogues with the Asia-Pacific and to develop a closer "*transatlantic partnership on the green and digital transformation*". The Communication also recognises the importance to create the necessary conditions allowing for the ratification of the trade agreements concluded with Mercosur and with Mexico, and to conclude ongoing negotiations with Australia, Chile, and New Zealand. Regarding the EU-Mercosur Association Agreement, the Communication states that "*a dialogue is ongoing on enhancing cooperation on the sustainable development dimension of the Agreement, addressing the implementation of the Paris Agreement and deforestation in particular*".

### ***Implications of the updated EU trade policy***

The Communication refers to a series of autonomous measures linked to the EU's trade policy, such as the EU's envisaged *Carbon Border Adjustment Mechanism* (hereinafter, CBAM), legislation on deforestation and forest degradation, the issue of mandatory environmental and human rights due diligence, which will include provisions on forced labour, and a chapter on sustainable food systems to be included in future trade agreements. With respect to the envisaged *Carbon Border Adjustment Mechanism*, the Communication states that "*the Commission is working on a proposal for a CBAM in order to avoid the effectiveness of its own climate policies being undermined by carbon leakage*". Regarding the legislative proposal on mandatory environmental and human rights due diligence, the Communication notes that it would include "*effective action and enforcement mechanisms to ensure that forced labour does not find a place in the value chains of EU companies*". The Communication does not provide concrete details with regard to the legal framework of these measures, nor any clues as to whether they would be compatible with the EU's WTO commitments. Legislative proposals are expected during the course of this year.

The uncertainty surrounding the design of such measures raises concerns as to their compatibility with WTO rules. The Communication states that "*imports must comply with relevant EU regulation and standards*" and that "*under certain circumstances as defined by WTO rules, it is appropriate for the EU to require that imported products comply with certain production requirements*". In addition, the Communication states that "*the legitimacy of applying production requirements to imports is based on the need to protect the global environment or to respond to ethical concerns*". EU policies that would discriminate imported products vis-à-vis 'like' domestic products, based on how they were produced, risk being incompatible with WTO rules, notably with the non-discrimination principle. This issue has been addressed in various occasions by the WTO Appellate Body and only very few cases have been found to be justified in accordance with the exceptions allowed under the WTO Agreements. Finally, some of these instruments will likely require compliance protocols, thereby significantly raising the administrative and financial burdens for companies wishing to trade with the EU.

### ***Mixed reactions***

The updated EU trade policy has led to mixed reactions. The *European Service Forum* (hereinafter, ESF) welcomed the Communication, particularly "*the strong focus on services and digital trade*". The Confederation of European Business *BusinessEurope* stated that "*the EU must resist protectionist temptations and remain a strong defender of open markets*". The European Consumer Association *BEUC* stated that there are many areas in the Communication that require further clarification and that it falls short with respect to the alignment of the issues of trade and environment.

### ***The way forward***

The EU's new '*Open, Sustainable and Assertive Trade Policy*' strategy reads as an evolution of the former '*Trade for All*' strategy paper. The EU remains committed to open, free, and fair trade, with a clear commitment to the proper functioning of the WTO. The EU continues to expand on the sustainability policies that were introduced under the previous Commission. The

assertiveness should lead, in the opinion of the Commission, to more sustainable trade, while responding “to competitive distortions and ensure a level playing field”. All interested stakeholders should take note of these changes to the EU’s trade policy strategy and the upcoming policy measures, which will require proper assessment, as well as thorough compliance strategies. Positions should be developed and put forth to EU negotiators, for instance with regard to the envisaged chapter on ‘sustainable food systems’ that is to be included in future trade agreements negotiated by the EU.

## **The Government of Indonesia updates the *halal* product assurance regime to speed-up *halal* certification applications**

In September 2014, the Government of Indonesia had enacted *Law No. 33 Year 2014 concerning Halal Product Assurance* (hereinafter, *Halal Law*), which requires products that enter, circulate, and are traded within the territory of Indonesia to comply with *halal* certification and labelling requirements. A number of provisions in the *Halal Law* were amended by the *Law No.11 Year 2020 concerning Job Creation* (hereinafter, *Job Creation Law*), which entered into force on 2 November 2020 (see *Trade Perspectives, Issue No. 21 of 13 November 2020*). In order to further implement the new provisions on *halal* product assurance introduced under Articles 48 and 185(b) of the *Job Creation Law*, on 2 February 2021, the Government of Indonesia issued *Government Regulation No. 39 Year 2021 concerning Organization of Halal Product Assurance Sector* (hereinafter, *GR No. 39/2021*).

### **Overview of *halal* requirements**

*Halal* is an Arabic term that translates to “permissible” or “lawful” and which, in the *Quran*, is contrasted with *haram* that translates to “forbidden”. The term is associated with Islamic dietary laws and, in particular, with meat processed and prepared in accordance with those requirements. The most common example of non-*halal* food is pork, but other foods that are considered not to be in a state of purity are also considered *haram*. The criteria for non-pork items include their source, the cause of the animal’s death, and how the food is processed. Muslims must also ensure that all foods, notably processed foods, as well as non-food items, such as cosmetics and pharmaceuticals, are *halal*. Frequently, these products contain animal by-products or other ingredients that are not permissible for Muslims to eat or use on their bodies. Further foods that are considered not *halal* include blood derivatives and ‘*intoxicants*’, such as alcoholic beverages. Given the religious significance of *halal* for Muslims, businesses started labelling their products accordingly and Governments around the world introduced *halal* certification schemes. While of relevance for many consumers around the world, *halal* labelling and certification requirements also result in significant non-tariff measures affecting trade.

### **The scope and gradual implementation of *halal* certification in Indonesia**

*GR No. 39/2021* provides the legal framework for *halal* certification in Indonesia. It addresses a number of key issues, such as *halal* requirements for goods and services, the timeline for the implementation of the *halal* certification obligation, the application for and extension of *halal* certificates, as well as the requirements for the *halal* label and non-*halal* information. *GR No. 39/2021* repeals and replaces *Government Regulation No. 31 Year 2019 concerning the Implementing Regulation to Halal Law* (hereinafter, *GR No. 31/2019*) and introduces a number of changes to the previous rules.

The mandatory *halal* certification and labelling, as a prerequisite for a product (*i.e.*, goods and services) to be placed on the market in Indonesia under the *Halal Law*, is being implemented gradually, starting with food and beverages, and then being extended to non-food and beverage products, such as medicines and cosmetics. Article 135 of *GR No. 39/2021* recalls the scope of goods and services required to be certified as *halal*, as originally set out in *Halal Law*. Goods requiring *halal* certification include food, beverages; medicines; cosmetics; chemical products; biological products; genetically modified products; and consumer goods of

animal origin or containing ingredients of animal origin (e.g., leather goods). On the other hand, services requiring *halal* certification include slaughter, processing, storage, packaging, distribution, sales, and presentation.

Chapter XI of *GR No. 39/2021* provides a detailed timeline for the implementation of the mandatory *halal* certification for the various types of products. Currently, the *halal* certification obligation only applies to food and beverages, but, in accordance with *GR No. 39/2021*, the certification obligation will be extended to other products on the basis of the following timeline:

- Food and beverages products resulting from slaughter and slaughtering services: 17 October 2019 – 17 October 2024;
- Traditional drugs, quasi-drugs and health supplements: 17 October 2021 – 17 October 2026;
- Over-the-counter drugs and limited over-the-counter drugs: 17 October 2021 – 17 October 2029;
- Prescription drugs (excluding narcotics): 17 October 2021 – 17 October 2034;
- Cosmetics, chemical products and genetically engineered products: 17 October 2021 – 17 October 2026;
- Clothing, headwear and accessories: 17 October 2021 – 17 October 2026;
- Household healthcare products, household appliances, Muslim prayer equipment and stationery: 17 October 2021 – 17 October 2026;
- Medical equipment (risk class A): 17 October 2021 – 17 October 2026;
- Medical equipment (risk class B): 17 October 2021 – 17 October 2029;
- Medical equipment (risk class C): 17 October 2021 – 17 October 2034; and
- Pharmaceutical products, biological products and medical devices for which the relevant raw materials and/or manufacturing processes have not yet been brought into line with *halal* provisions: *According to the prevailing laws and regulations.*

Business actors will benefit from ‘*grace*’ periods to comply with the mandatory *halal* certification obligation. For food and beverages products, for instance, although the obligation has been implemented since 17 October 2019, business actors have five years, until 17 October 2024, to comply with the requirements. Beyond a given end-date, the relevant products that are not accompanied by a *halal* certificate may not be placed on the market in Indonesia.

### ***Simplification of halal certification procedures***

One of the most notable changes introduced by the *Job Creation Law* is the simplification and introduction of shorter timeframes with respect to the issuance of *halal* certificates, as each *halal* certification procedure is subject to a certain time limit. On the basis of Article 59 of *GR No. 39/2021*, businesses must submit applications for *halal* certificates in the Bahasa Indonesia language through the electronic filing system of the *Halal Product Assurance Organising Agency’s* (i.e., *Badan Penyelenggara Jaminan Produk Halal*, hereinafter, *BPJPH*). Once the documents have been received, examined, and deemed complete by the BPJPH, a business may choose a *Halal* Examination Institution, which is to be appointed by the BPJPH, to verify the *halal* status of the goods and/or services in question. The *Halal* Examination Institution will then appoint a *Halal* Auditor to carry out the inspection and to submit the inspection result of the goods and/or services’ *halal* nature directly to Indonesia’s Ulama Council (i.e., *Majelis Ulama Indonesia*, MUI, Indonesia’s top Muslim clerical body). On the basis of such result, the Ulama Council will determine the *halal* nature of the products at a *fatwa* (i.e., a non-binding legal opinion on a point of Islamic law) *halal* hearing. Once the products have been officially declared *halal* by the Ulama Council, the BPJPH will issue the relevant *halal* certificate.

Overall, the procedures for obtaining *halal* certificates under the *Job Creation Law* remain the same as they were under the old *Halal Law*. Nonetheless, *GR No. 39/2021* provides for the

reduction of the applicable timeframes for *halal* certificate applications, as detailed in the table below:

Procedure	New timeframe under <i>GR No. 39/2021</i> as mandated by the <i>Job Creation Law</i>	Previous timeframe under the <i>Halal Law</i>
Examination and verification of an application and regarding the completeness of the required documents by the BPJPH	One working day	Ten working days
Appointment of a <i>Halal</i> Examination Institution by the BPJPH	One working day (extendable by one working day)	Five working days
Inspection of the <i>halal</i> status of the applicant's products by the appointed <i>Halal</i> Examination Institution (out by a <i>Halal</i> Auditor)	<ul style="list-style-type: none"> <li>15 working days, extendable by 10 working days, for products produced domestically</li> <li>15 working days, extendable by 15 working days, for products produced overseas</li> </ul>	<ul style="list-style-type: none"> <li>40 working days, extendable by 20 working days, for products produced domestically</li> <li>60 working days, extendable by 30 working days, for products produced overseas</li> </ul>
Determination of the <i>halal</i> status through a <i>fatwa halal</i> hearing by the Ulama Council	Three working days, extendable by three working days	30 working days
Issuance of the <i>halal</i> certificate by the BPJPH	One working day	Seven working days

As seen in the table above, the process of obtaining a *halal* certificate under the new rules mandated by the *Job Creation Law* and its implementing regulation should only take approximately 21 working days, while, under the previous rules under the *Halal Law*, it could have taken up to 97 working days, for products produced domestically, and 117 business days, for products produced overseas, to be certified. The validity of the *halal* certificates is four years. However, *GR No. 39/2021* now introduces the facilitation that the BPJPH may automatically issue renewals of *halal* certificates to businesses when the latter provide a letter stating that the products have not undergone composition changes. Under the previous framework, businesses were still required to apply for a renewal of the certificate, even when products had not undergone any changes.

### ***Simpler procedures in obtaining the halal certificate for micro and small enterprises***

One of the objectives of the *Job Creation Law* is to increase opportunities for micro and small enterprises to develop and strengthen their businesses. Indonesian micro and small enterprises have been experiencing difficulties in obtaining *halal* certificates, due to the burdensome procedures and the expensive fees. The *Job Creation Law* attempts to resolve this issue. On the basis of Article 48 of the *Job Creation Law*, the obligation for micro and small enterprises to comply with *halal* certification will be based on a self-made declaration, as opposed to a standard application. Micro and small enterprises will have to ensure that, in accordance with the BPJPH's standards, the products used are not risky, have been declared as *halal*, and that the production process is simple and confirmed to be *halal*. The declaration has to be submitted to the BPJPH and forwarded to the Ulama Council. Based on the declaration made by the relevant enterprises, the Ulama Council will organise a *fatwa halal* hearing to determine the *halal* nature of the goods or services, and the BPJPH will then issue the *halal* certificate. In addition to the simplified and expedited procedure, micro and small enterprises will not be charged any fee related to obtaining the *halal* certificate.

### ***Faster procedures, but the same burdensome requirements***

Overall, the *Job Creation Law* and *GR No. 39/2021* aim at improving the efficiency of the *halal* certification procedures and businesses should expect an expedited process. Nevertheless, there appears to be no substantive amendment with respect to the 'mandatory' *halal* certification and labelling requirements themselves. Indonesia's *halal* product assurance regime applies to a wide-ranging scope covering consumer products ranging from foodstuffs,

pharmaceutical products, to personal care products. To ensure that their products may enter into and be traded within Indonesia, relevant stakeholders intending to export to Indonesia should assess the timeline for the *halal* certification obligation and pursue compliance with the applicable requirements. Despite the changes on the basis of the *Job Creation Law* and *GR No. 39/2021*, Indonesia's *halal* requirements will become increasingly strict and will apply to an increasing range of goods and services, leading to important challenges for traders exporting to Indonesia.

## **A key decision by the European Commission on the classification of CBD products is expected to give a boost to the industrial hemp sector in the EU**

On 2 December 2020, the European Commission sent a letter to the *European Industrial Hemp Association* (hereinafter, EIHA) communicating its conclusion not to consider Cannabidiol (hereinafter, CBD) as a narcotic within the meaning of the *United Nations Single Convention on Narcotic Drugs of 1961*. The decision follows a preliminary assessment by the Commission of July 2020, which led to the suspension of all applications for the placing on the EU market of CBD products as novel foods, in order to first determine whether “*extracts from industrial hemp varieties of Cannabis Sativa L., and thus CBD, qualify as ‘drugs’ in the framework of the EU legislation*”. The Commission's decision was strongly welcomed by the EU hemp industry and is expected to provide an important boost for this growing sector.

### ***The new market of CBD products***

For a couple of years now, products derived from the hemp plant (*i.e., Cannabis sativa L.*), are experiencing great success among EU consumers. CBD is one of the chemical compounds (*i.e., cannabinoids*) that are found in the hemp plant and that give the latter its medical and recreational properties. CBD accounts for up to 40% of the plant's extract and does not appear to have any psychoactive effects, such as those caused by tetrahydrocannabinol (hereinafter, THC). CBD has been increasingly marketed in recent years for its alleged analgesic (*i.e., pain-relieving*), neuroprotective (*i.e., recovering or regenerating vis-à-vis the nervous system, its cells, structure and function*), and anti-inflammatory (*i.e., reducing pain and inflammation*) effects.

### ***Temporary suspension of the authorisation process of CBD-based products***

In recent times, more than 50 applications, for placing cannabinoid-based food ingredients on the EU market as novel foods, have been submitted to the Commission under Article 10 of *Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods* (hereinafter, Novel Foods Regulation). However, in July 2020, the Commission decided to suspend all applications for hemp-derived CBD products at their initial stage of evaluation in order to first determine whether hemp flower-derived CBD falls under the definition of ‘*narcotic*’ in the meaning of the *UN Single Convention on Narcotic Drugs 1961* (see *Trade Perspectives, Issue No. 15 of 31 July 2020*).

On the basis of Article 2 of *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, the EU General Food Law), “‘*food*’ means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans” and “includes [...] any substance [...] intentionally incorporated into the food during its manufacture, preparation or treatment”. Importantly, Article 2(g) of the EU General Food Law provides that ‘*food*’ is not to include “*narcotic or psychotropic substances within the meaning of the United Nations Single Convention on Narcotic Drugs 1961, and the United Nations Convention on Psychotropic Substances 1971*”.

Article 3(2)(a) of the *Novel Foods Regulation*, defines novel food as “any food that was not used for human consumption to a significant degree within the Union before 15 May 1997”. If the Commission’s assessment had confirmed that hemp flower-derived CBD falls within the definition of ‘narcotic’, in the meaning of the *UN Single Convention on Narcotic Drugs 1961*, CBD would not have been considered as food and, therefore, would have been automatically disregarded in the context of Novel Food applications.

### **Commission decides not to consider CBD products as a ‘narcotic’**

In its letter to the EIHA, the Commission declared that, “*in light of the comments received from applicants and of the recent Court’s judgment in case C-663/184, the Commission has reviewed its preliminary assessment and concludes that cannabidiol should not be considered as drug within the meaning of the United Nations Single Convention on Narcotic Drugs of 1961 in so far as it does not have psychotropic effect*”. As a consequence, cannabidiol may be qualified as food, provided that also the other conditions of Article 2 of the EU General Food Law are met, particularly that it is safe.

The position expressed by the Commission, which reversed the preliminary assessment communicated in July 2020, takes into account a ruling by the Court of Justice of the EU (hereinafter, CJEU) in [case C-663/18](#), issued on 19 November 2020. The Court’s judgement follows a request for a preliminary ruling by the Court of Appeals of Aix-en-Provence in France.

In 2017, a French Court had convicted the seller of *KanaVape* e-cigarette cartridges containing CBD, which had been lawfully extracted from the whole hemp plant in the Czech Republic, because in France, according to Article 1 of the Decree of 22 August 1990 applying Article R. 5132-86 of the Public Health Law to cannabis, only the fibres and seeds of the hemp plant are considered legal for reasons of public health. The Court of Appeals requested the CJEU to rule on whether the principle of the free movement of goods must be interpreted “*as meaning that the derogating provisions introduced by the Decree of 22 August 1990, by limiting the cultivation, industrialisation and marketing of hemp solely to fibres and seeds, impose a restriction that is not in accordance with [EU] law*”.

The CJEU considered that CBD did not appear to have any psychotropic or other harmful effect on humans. Given that the preamble of the *UN Single Convention on Narcotic Drugs 1961* states that the Parties are concerned with human health and, since CBD only contains negligible amounts of psychoactive ingredients, the Court considered that “*it would be contrary to the purpose and general spirit of the Single Convention to include it under the definition of ‘drugs’ within the meaning of that convention as a cannabis extract*”. For this reason, the CJEU concluded that CBD “*is not a drug within the meaning of the Single Convention*”.

With regard to the exceptions to the free movement of goods within the EU, the CJEU noted that a “*decision to prohibit marketing, which indeed constitutes the most restrictive obstacle to trade in products lawfully manufactured and marketed in other Member States, can be adopted only if the real risk alleged for public health appears sufficiently established on the basis of the latest scientific data available at the date of the adoption of such a decision*”. The CJEU concluded that the relevant provisions of the TFEU “*must be interpreted as precluding national legislation which prohibits the marketing of CBD lawfully produced in another Member State when it is extracted from the Cannabis sativa plant in its entirety and not solely from its fibre and seeds, unless that legislation is appropriate for securing the attainment of the objective of protecting public health and does not go beyond what is necessary for that purpose*”.

### **Negligible easing of global restriction on Cannabis**

The Commission’s reversed assessment of CBD coincided with the 63<sup>rd</sup> session of the *United Nations Commission on Narcotic Drugs*, where a number of amendments to the *UN Single Convention on Narcotic Drugs 1961*, proposed by the *World Health Organization Committee on Drug Dependence*, were voted with the aim of easing the almost 60 years of restrictions on cannabis.

More specifically, the *United Nations Commission on Narcotic Drugs* decided to move cannabis and cannabis resins from Schedule IV to Schedule I of the *UN Single Convention on Narcotic Drugs*. This Convention classifies narcotic substances in four schedules: Schedule I, listing substances with addictive properties, presenting a serious risk of abuse (e.g., cannabis and its derivatives, cocaine, heroin, methadone, morphine, opium); Schedule II, listing substances normally used for medical purposes and given the lowest risk of abuse (e.g., codeine, dihydrocodeine); Schedule III, listing preparations of substances listed in Schedule II, as well as preparations of cocaine (e.g., preparations of codeine, dihydrocodeine); and Schedule IV, listing the most dangerous substances, already listed in Schedule I, which are particularly harmful and of extremely limited medical or therapeutic value (e.g., cannabis and cannabis resin). The control provisions under Schedule I constitute the standard regime under the Single Convention and include trade restrictions and requirements of governmental authorisation.

Other proposed amendments were rejected, namely: 1) Deleting “*extracts and tinctures of cannabis*” from Schedule I of the *UN Single Convention on Narcotic Drugs*; 2) Clarifying that CBD preparations containing less than 0.2% of THC are not under international control; and 3) Adding a footnote to the entry on cannabis, which would have clarified that preparations containing “*predominantly*” CBD and up to 0.2% of THC are not under international control. Although some of the amendments were rejected, the EU, in the [explanation of its vote](#), explicitly supported the deletion of extracts and tinctures of cannabis from Schedule I of the *UN Single Convention*. Furthermore, with respect to CBD preparations, the EU considered that such move “*would lower the current control level of those preparations*” and noted “*that the establishment of the 0,2% THC limit is not supported by scientific evidence and would welcome further consultation with all relevant stakeholders on a recommendation on the appropriate level of the international control of cannabis preparations with low level of THC*”.

### ***A better future for the EU hemp industry?***

The Commission’s decision not to consider CBD as a ‘*drug*’ has been praised by the EIHA, which expressed satisfaction and declared that the shift in the Commission’s position would allow the pending novel food applications to move forward in their authorisation process. The initiatives at EU and international level appear to indicate a gradual shift in attitude towards CBD and should contribute to much needed greater legal certainty. The CJEU’s ruling, which likely has caused the Commission’s change of position, provides the clear legal interpretation that CBD is not to be considered a ‘*drug*’, but confirms that EU Member States have a large degree of discretion in restricting the placing on the market of CBD extracts from controlled parts of the hemp plant.

According to the *CBD Consumer Report*, published in 2020, the EU CBD sector has significant potential. However, the significant margin of discretion retained by EU Member States is poised to allow obstacles to the rapid development of the sector. Food business operators wishing to exploit the market potential of CBD-based products should remain vigilant regarding the legal situation in the EU, at national, as well as at global level and should seek legal advice in order to ensure regulatory compliance and to secure the necessary authorisation for placing their products on the market.

## **Recently Adopted EU Legislation**

### **Trade Law**

- *Council Decision (EU) 2021/326 of 22 February 2021 on the position to be adopted, on behalf of the Union, within the Trade Committee established by the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part,*

*as regards the amendment of Appendix 1 of Annex XII (Government Procurement)*

- *Commission Implementing Regulation (EU) 2021/254 of 18 February 2021 amending Implementing Regulations (EU) 2020/761 and (EU) 2020/1988 and Regulations (EC) No 218/2007 and (EC) No 1518/2007 as regards imports of products originating in the United Kingdom and excluding those products from the tariff quotas with ongoing quota periods*

## **Trade Remedies**

- *Commission Implementing Regulation (EU) 2021/342 of 25 February 2021 reimposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in the Kingdom of Thailand, in so far as it concerns River Kwai International Food Industry Co., Ltd, following the reopening of the interim review pursuant to Article 11(3) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*
- *Commission Implementing Regulation (EU) 2021/328 of 24 February 2021 imposing a definitive countervailing duty on imports of continuous filament glass fibre products originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council*

## **Food Law**

- *Commission Implementing Regulation (EU) 2021/349 of 25 February 2021 amending Regulation (EC) No 1484/95 as regards fixing representative prices in the poultrymeat and egg sectors and for egg albumin*
- *Commission Implementing Regulation (EU) 2021/279 of 22 February 2021 laying down detailed rules for the implementation of Regulation (EU) 2018/848 of the European Parliament and of the Council on controls and other measures ensuring traceability and compliance in organic production and the labelling of organic products*
- *Commission Delegated Regulation (EU) 2021/269 of 4 December 2020 amending Delegated Regulation (EU) 2020/427 as regards the date of application of the amendments to certain detailed production rules for organic products in Annex II to Regulation (EU) 2018/848 of the European Parliament and of the Council*
- *Commission Implementing Regulation (EU) 2021/171 of 12 February 2021 amending Implementing Regulation (EU) 2019/626 as regards lists of third countries and regions thereof authorised for the entry of consignments of insects into the Union*

## **Other**

- *Commission Regulation (EU) 2021/341 of 23 February 2021 amending Regulations (EU) 2019/424, (EU) 2019/1781, (EU) 2019/2019, (EU) 2019/2020, (EU) 2019/2021, (EU) 2019/2022, (EU) 2019/2023 and (EU) 2019/2024 with regard to ecodesign requirements for servers and data storage products, electric motors and variable speed drives, refrigerating appliances, light sources and*

*separate control gears, electronic displays, household dishwashers, household washing machines and household washer-dryers and refrigerating appliances with a direct sales function*

- *Commission Delegated Regulation (EU) 2021/340 of 17 December 2020 amending Delegated Regulations (EU) 2019/2013, (EU) 2019/2014, (EU) 2019/2015, (EU) 2019/2016, (EU) 2019/2017 and (EU) 2019/2018 with regard to energy labelling requirements for electronic displays, household washing machines and household washer-dryers, light sources, refrigerating appliances, household dishwashers, and refrigerating appliances with a direct sales function*
- *Commission Delegated Regulation (EU) 2021/268 of 28 October 2020 amending Annex IV to Regulation (EU) 2018/841 of the European Parliament and of the Council as regards the forest reference levels to be applied by the Member States for the period 2021-2025*

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