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Reform of the EU's Generalised Scheme of Preferences: Amendments proposed by the European Parliament could impact market access for developing countries

On 2 May 2022, the European Parliament's Committee on International Trade (hereinafter, INTA) adopted the *Draft Report on the Proposal for a Regulation on applying a Generalized Scheme of Tariff Preferences and repealing Regulation (EU) No 978/2012 of the European Parliament and of the Council* (hereinafter, INTA Committee Report). In September 2021, the European Commission (hereinafter, Commission) had published its *Proposal for a Regulation on applying a Generalised Scheme of Tariff Preferences and repealing Regulation (EU) No 978/2012 of the European Parliament and of the Council* (hereinafter, the proposed GSP Regulation), intended to replace the EU's current Regulation, which sets out the EU's Generalised Scheme of Preferences Regulation (hereinafter, GSP) and which is set to expire on 31 December 2023. While the INTA Committee Report shares the overall objectives pursued by the Commission, it proposes a number of stricter rules that might have an impact on beneficiary countries and their access to the EU Single Market. Once the INTA Committee Report is adopted by the European Parliament's plenary, it will become the European Parliament's position on the new GSP Regulation for purposes of negotiating with the Council of the EU and the Commission, as those bodies attempt to reach an agreement on a common text.

Understanding 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 wide range of goods exported to the EU from developing countries and least developed countries (LDCs). The GSP scheme is intended to increase export revenues in developing countries, so as to reduce poverty and to promote sustainable development and good governance. The preferential arrangements under the GSP focus solely on granting tariff preferences for trade in goods and do not extend to services or other areas covered by modern comprehensive trade agreements. As a general matter, GSP schemes are made possible by 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 WTO Members to grant differential and more favourable tariff treatment to imports from developing countries.

The EU's GSP consists of three types of preferential trade arrangements: 1) A general arrangement for developing countries meeting certain eligibility criteria, known as the Standard GSP; 2) A special incentive arrangement for sustainable development and good governance or 'GSP+'; and 3) A targeted scheme for LDCs, known as the 'Everything But Arms' arrangement (hereinafter, EBA) that removes duties for all goods, except for arms and ammunition.

The Commission's Proposal for a new GSP Regulation

On 22 September 2021, the Commission published its Proposal for a new GSP Regulation, which maintains the overall structure of the current GSP Regulation. According to the Commission, the changes to the current GSP primarily aim at reinforcing "*the scheme's social, environmental and climate aspects, reduce poverty and increase export opportunities for developing countries*". The changes appear to reflect the Commission's commitments and increased focus on principles related to trade and sustainable development, as well as the importance of climate change mitigation and "*environmental protection standards"*.

One of the more notable amendments offered in the Commission's Proposal relates to the conditions for a country to become a GSP+ beneficiary. The Commission's Proposal foresees an increase in the number of conventions that must be ratified and implemented before a country may apply for GSP+ beneficiary status. The Commission's Proposal introduces six additional international conventions in the area of environmental protection and good governance. The increased number of international conventions that must be ratified as a requirement to benefit from the EU's GSP+ scheme might have an impact on current GSP+ beneficiaries (*e.g.*, Bolivia, Cape Verde, Pakistan, the Philippines, and Sri Lanka). All beneficiaries would be required to reapply for GSP+ status in order to continue benefitting from the trade preference.

Another key change proposed by the Commission relates to the so-called '*product sector graduation*', which requires the EU to suspend tariff preferences when the average value of EU imports of a certain product exceeds a certain threshold (*i.e.*, exceeds the total value of EU imports of the same products from all GSP beneficiary countries). In this context, the Commission's Proposal introduces updates to the GSP Regulation that would enable the Commission to more rapidly suspend tariff preferences. Additionally, the Commission proposes to introduce new rules "*to extend the scope of withdrawal measures where additional reasons or violations occur*", including violations "*of the principles of the conventions on climate change and environmental protection*". Furthermore, the Commission's Proposal also introduces changes that would allow the Commission to withdraw tariff preferences more rapidly when "*the exceptional gravity of the violations calls for a rapid response in view of the specific circumstances in the beneficiary country*" (for more details on the Commission's Proposal, see *Trade Perspectives,* Issue No. 18 of 8 October 2021).

Stricter rules proposed by the INTA Committee

Following the Proposal by the Commission, the European Parliament and the Council of the EU are preparing their positions for the forthcoming interinstitutional '*trilogue*' negotiations. In the European Parliament, the INTA Committee is responsible for preparing the Parliament's position and has been discussing potential amendments. As noted above, on 2 May 2022, the INTA Committee adopted the report on the Commission's Proposal.

The INTA Committee Report agrees with the main objectives pursued by the Commission's Proposal for the revised GSP Regulation. However, the INTA Committee also believes that the GSP's potential for contributing to eradicate poverty has not been fully exploited. Therefore, in order "*to reach the full potential of the GSP in relation to impact on sustainable development*", the INTA Committee proposes to extend the list of international conventions and to introduce stricter rules to be complied with by beneficiary countries for them to benefit from the scheme

and with respect to the monitoring of the ratification of and compliance with the international conventions.

One of the main changes proposed in the INTA Committee Report concerns the conditionality in relation to the international conventions that must be ratified and implemented in order for developing countries to benefit from the GSP+ scheme. First, the INTA Committee Report proposes to extend the list of international conventions by five additional conventions, namely the First Optional Protocol of the International Covenant on Civil and Political Rights, the Rome Statute of the International Criminal Court, the Protocol of 2014 to the Forced Labour Convention of 1930, the Occupational Safety and Health Convention No 155, and the Promotional Framework for Occupational Safety and Health Convention No 187. Secondly, the INTA Committee Report proposes to extend the conditionality regarding the ratification of the international conventions also to standard GSP beneficiaries. Currently, the conditionality only applies to GSP+ beneficiaries. The INTA Committee Report states that standard GSP beneficiaries must ratify all international conventions listed in Annex VI to the proposed GSP Regulation within "*five years upon the application of the preferences*". Should a standard GSP beneficiary not ratify those conventions, the Commission could temporarily suspend the trade preferences accorded that country. While the INTA Committee argues that this provision would help beneficiary countries transition from the GSP to the GSP+ scheme, it could also make it more difficult for developing countries to benefit from standard GSP preferences. Additionally, such conditionality might conflict with the spirit, and perhaps even the substance, of the WTO's '*Enabling Clause*', as it would not facilitate the enjoyment of the standard GSP preferences. According to paragraph 3(a) of the '*Enabling Clause*', in fact, any differential or most favourable treatment "*shall be designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other contracting parties*".

Another relevant proposed change concerns the requirements to become a GSP+ beneficiary. In this regard, the INTA Committee Report proposes, in addition to the conditionality to ratify and implement the international conventions, that GSP+ beneficiaries be required to adopt a "*National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights, in conformity with the Guidance on National Action Plans of the UN Working Group on Business and Human Rights*". Additionally, GSP+ beneficiary would be required to adopt a "*time-bound plan of action of measures that are necessary to effectively implement the relevant conventions*".

The INTA Committee Report intends to reflect the EU's sustainability objectives in the future GSP Regulation so as to align this legal instrument to the *European Green Deal*. In this regard, the INTA Committee Report proposes to provide additional incentives for trade in sustainable products. More specifically, the INTA Committee Report proposes the introduction of a definition of "*sustainable product*", which would refer to "*goods whose production, trading, marketing and distribution minimise or have no negative environmental or human rights impacts, are safe for employees (…) and are certified by voluntary sustainability standards that are recognised as operationalising the principles of the conventions listed in Annex VI and the UN Guiding Principles on Business and Human Rights*".

In the context of the GSP+, the list of products subject to tariff reduction are divided into '*sensitive*' and '*non-sensitive*' products. A '*sensitive product*' is a product that is particularly vulnerable to competition from imports from third country suppliers. '*Non-sensitive products*' benefit from full liberalisation, while '*sensitive products*' are subject to tariff reductions compared to the EU's MFN tariff. The INTA Committee Report proposes that tariffs for products listed as "*sensitive products*" in Annex III of the Commission's proposed GSP Regulation, such as dairy spreads, eggs, and cocoa or cocoa preparations be reduced by 4.5% points "*if those products are certified as sustainable products*". '*Sensitive products*' not certified as sustainable would only benefit from a tariff reduction of 3.5% points.

GSP beneficiaries must prepare

The changes to the Commission's Proposal for the EU's new GSP Regulation envisaged by the INTA Committee, if adopted, may have a significant impact on GSP beneficiary countries and, ultimately, on businesses around the world that rely on the preferential access to the EU market. While the novelties contained in the Proposal by the Commission mainly focus on changes for GSP+ beneficiaries, the proposed amendments by the INTA Committee would also affect standard GSP beneficiaries. Stricter rules for the standard GSP scheme would also increase the burdens when least developed countries (hereinafter, LDC) that benefit from EBA preferences graduate from LDC status and intend to benefit from the standard GSP or GSP+.

On 16 May 2022, the INTA Committee voted in favour of entering into negotiations with the Council of the EU on the basis of the draft report. The INTA Committee Report will likely be put to a vote at the European Parliament's plenary before the end of the first semester of 2022. At the same time, the decision to enter into negotiations with EU Member States would be announced and, if objected to, would also be subject to a vote. All relevant stakeholders and GSP beneficiaries should closely follow this legislative process, seek legal advice, and, where necessary, raise their concerns in time for them to be considered.

Voluntary Partnership Agreements: A viable option for timber-exporting countries to maintain access to the EU market?

On 10 May 2022, the European Commission (hereinafter, Commission) published its Proposal for a *Council Decision on the conclusion of the Voluntary Partnership Agreement between the European Union and the Co-operative Republic of Guyana on forest law enforcement, governance and trade in timber products to the European Union* (hereinafter, EU-Guyana VPA). VPAs are part of the EU's *Action Plan on Forest Law Enforcement, Governance, and Trade* (hereinafter, FLEGT Action Plan), which, *inter alia*, provides for trade-related measures, such as a licensing scheme to verify the legality of timber from third countries for purposes of exports to the EU. Timber is also one of the commodities that the Commission proposes to include in the future *Regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation*, indicating upcoming changes to the relevant regulatory framework.

Establishing a legal framework for trade in timber with the EU

In 2003, the Commission set out the *FLEGT Action Plan* through the *Communication from the Commission to the Council and the European Parliament - Forest Law Enforcement, Governance and Trade (FLEGT) - Proposal for an EU Action Plan*. The *FLEGT Action Plan* includes trade-related measures to "*control imports of illegally harvested timber into the EU*", one of which is *Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community* (hereinafter, FLEGT Regulation). The FLEGT Regulation provides rules for the establishment of voluntary licensing schemes to authenticate the legality of timber imported into the EU from those third countries that agree to take part in the scheme. The FLEGT Regulation must be seen in the context of *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market* (hereinafter, EU Timber Regulation), which requires economic operators that place timber and timber products on the EU market to *"undergo and implement due diligence to verify the legality of their sourced timber*". The EU Timber Regulation recognises valid FLEGT-licences as indicating compliance with the due diligence requirements for importing timber into the EU.

The FLEGT licensing scheme is implemented through VPAs with timber producing countries that wish to sign such agreements with the EU. A VPA is a legally binding agreement between the EU and a timber-producing country to "*ensure that timber and timber products imported*

into the EU come from legal sources". Importantly, it is the VPA partner country that determines, through reference to its own domestic law, whether timber has been '*legally sourced*'. FLEGT licences are then issued by a partner country's licensing authority and are either shipment-based (*i.e.*, accompany a shipment of timber) or market participant-based (*i.e.*, granted to an entity involved in forestry, transformation, or trade aspects of timber products). A FLEGT licence provides evidence that a shipment of timber complies with the requirements of the FLEGT licensing scheme, subject to verification by competent authorities designated by EU Member States.

In addition to trade-related measures against illegal timber, VPAs also purport to "*address the causes of illegality by improving forest governance and law enforcement*". Relatedly, each VPA must "*specify an agreed schedule for implementing the commitments"* of the partner country. Since its inception in 2005, The EU has concluded a mere seven VPAs, namely with Cameroon, the Central African Republic, the Republic of the Congo, Ghana, Indonesia, Liberia, and Viet Nam. Negotiations are ongoing with Côte d'Ivoire, the Democratic Republic of the Congo, Gabon, Lao PDR, Malaysia, and Thailand. Eurostat statistics indicate that, between 2000 and 2020, a range from 74% to 83% of the EU's tropical wood imports (in terms of value) originated from EU-VPA partner countries, including from countries with which the EU is still negotiating VPAs. According to Eurostat statistics, "*the main exporters in 2020 were Cameroon (33.7 % of the total), followed by Malaysia (16.1%) and Indonesia (14.2%*)".

Negotiating and implementing VPAs typically takes several years. A fair comparison of the pace of VPA negotiations and implementation would be inappropriate due to the variations in the country specific contexts. Consider, for example, that it took until November 2016 – more than ten years after the establishment of the FLEGT licensing scheme – for Indonesia to become the first EU partner country to have established an operational FLEGT licensing scheme (see *Trade Perspectives*, Issue No. 17 of 23 September 2016). Regarding the EU-Guyana VPA, negotiations took over nine years and "*parties have agreed to an ambitious timeline of six years (from entry into force)*" for Guyana to implement its commitments relating to: 1) Enacting specific legislation based on due diligence principles; 2) Reviewing and reforming where necessary, its forestry laws; and 3) Establishing a framework to monitor compliance and for independent evaluations of the system. Upon implementation, operators in Guyana's lumber industry would also have to take reasonable measures to minimise the risk of importing timber that is illegally sourced.

Proposal for an EU framework to address global deforestation

The EU increasingly deploys a range of policy instruments, such as trade agreements, to pursue more sustainable trade with its trading partners. In November 2020, the European Parliament adopted a resolution "*with recommendations to the Commission on an EU legal framework to halt and reverse EU-driven global deforestation*". The resolution notes that "*a lack of implementation, limited scope of timber products covered, and enforcement of the EU Timber Regulation means that it does not live up to its spirit and intent*". In November 2021, the Commission adopted a *Proposal for a Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation* (hereinafter, proposed Regulation for deforestation-free products), which is proposed to cover six commodities purportedly linked to deforestation and forest degradation, namely cattle, cocoa, coffee, palm oil, soya, and wood. The proposed Regulation for deforestation-free products would prohibit such commodities from being placed or made available on, or exported from, the EU market "*unless they are deforestation-free and have been produced in accordance with the relevant legislation of the country of production*" (see *Trade Perspectives*, Issue No. 6 of 28 March 2022).

The Commission, in justifying the Proposal for deforestation-free products, notes, *inter alia*, that a '*Fitness Check'* on the FLEGT Regulation and the EU Timber Regulation revealed that their objectives, "*namely to curb illegal logging and related trade, and to reduce the consumption of illegally harvested timber in the EU – have not been met*", and that, therefore,

"*it was concluded that focusing solely on legality of timber was not sufficient to meet the set objectives*". In that context, the proposed Regulation for deforestation-free products would repeal the EU Timber Regulation. Regarding the FLEGT Regulation and associated VPAs, the Commission notes the successes relating to "*enhanced stakeholders' participation and improved forest governance frameworks in partner countries*", but points out, as a major shortcoming, that "*the main EU trade partners have not shown interest to engage in VPA processes*", therefore "*resulting in only 3% of timber imports to the EU covered by an operational VPA system*". Nevertheless, the Proposal for deforestation-free products includes a provision declaring timber covered by a FLEGT license to have fulfilled the legality requirement, with the intention to respect the concluded VPAs and *"to preserve the progress achieved with partner countries that have an operating system in place*".

FLEGT licensing schemes and international trade law

Given the expansive scope and application of the due diligence obligations contained in the proposed Regulation for deforestation-free products, there is little doubt that its adoption would have a significant impact on trade. The EU's product-based measures, could, if challenged, be found to run afoul of the EU's WTO market access non-discrimination commitments vis-à-vis '*like products'*. (see *Trade Perspectives*, Issue No. 6 of 28 March 2022). For its part, the FLEGT Regulation seems to accord partner countries a fair amount of latitude in developing and implementing FLEGT licensing schemes. On the contrary, had the EU adopted a more heavy-handed approach, which insists on rigorous enforcement in the partner countries before a FLEGT licensing scheme may be recognised, one could imagine a VPA partner country raising a complaint. Arguably, if timber producing countries are not actually feeling pressure from the FLEGT licensing scheme (*e.g.*, if they are not worried that they would lose market share for timber in the EU), then there may be little incentive to bring a case at all.

Considerations for seeking VPAs

While focusing primarily on legality, the EU's FLEGT Action Plan recognises that the EU's wider objective is to encourage sustainable forest management. Legality provides the foundation for this because addressing governance and law enforcement challenges in timber-producing countries constitutes a pre-requisite to promote sustainable forest management on a domestic scale. However, the slow uptake of VPAs and the challenges of implementing the commitments could continue to limit their viability as an effective option for timber producing countries to establish and maintain market access to the EU. With respect to the EU-Guyana VPA, the Commission has invited the Council of the EU to adopt a decision for the signature of the agreement on behalf of the EU. The European Parliament must consent to the signed agreement before the Council of the EU adopts the decision to conclude the agreement. From its entry into force, Guyana will have six years to implement the commitments.

The UK's new calorie labelling regulations for the food and hospitality sector: A model for the EU?

On 6 April 2022, the UK's *Calorie Labelling (Out of Home Sector) (England) Regulations 2021* came into effect in England. The legislation requires certain food and hospitality businesses to provide customers with calorie information for food and drink served. The article reviews the UK rules on calorie labelling, which require, *inter alia*, the indication of calories on restaurant menus, and evaluates whether this could be a model for the EU. The article further considers the impact of calorie labelling on concerned stakeholder groups.

The Calorie Labelling (Out of Home Sector) (England) Regulations 2021

Following a consultation on calorie labelling for food and drink served outside of the home conducted in 2018, the UK Government introduced the *Calorie Labelling (Out of Home Sector) (England) Regulations 2021* (hereinafter, Calorie Labelling Regulations) to implement

mandatory calorie labelling by large food businesses (*i.e.*, businesses with 250 or more employees) in the out-of-home sector. Regulation 1(2) of the Calorie Labelling Regulations states that they "*extend to England and Wales, but apply to England only*". According to the UK Government, "*the legislation, which forms part of the government's strategy to tackle obesity, aims to ensure people can make more informed, healthier choices when it comes to eating food out or ordering takeaways*". The UK Government adds that "*displaying calorie information may also encourage businesses to provide lower calorie options for their customers*".

The underlying rationale behind the UK Government's introduction of calorie labelling in the out-of-home sector, is roughly as follows: 1) The increasingly important out-of-home sector (which makes up 20 to 25% of adult calorie intake) is generally considered to be any outlet where food or drink is prepared in a way that means it is ready for immediate consumption, on or off the premises; 2) The most common types of out-of-home food businesses include restaurants, cafes and takeaways. However, retail businesses, such as supermarkets, are growing contributors to food sold for consumption on the go; 3) Food and drink that is pre-packaged is required to display nutritional information, and consumers are familiar with seeing calorie content on the majority of items sold in the retail sector; 4) In contrast, the out-of-home sector typically sells non-prepacked food and is therefore not required to display nutritional information; 5) This makes it difficult for consumers to make informed, healthy decisions when purchasing food from such businesses.

To which foods do the calorie labelling requirements apply?

Regulation 3 of the *Calorie Labelling Regulations* identifies the food for which calorie information must be displayed as follows: "*These Regulations apply to food which (a) is offered for sale in a form which is suitable for immediate consumption, (b) is not prepacked food, and (c) is not exempt food*". Exemptions include food that is only on a menu for 30 days of the year or less and all alcoholic beverages above 1.2% alcohol by volume (ABV). "*Suitable for immediate consumption*" means "*that the food is offered for sale at a café, restaurant or other premises selling food for consumption on the premises*" or "*is offered for sale by a business for consumption off the premises and does not require any preparation by the consumer before it is consumed*".

The *Calorie Labelling Regulations* require food businesses to provide calorie information on physical menus, online menus, food delivery platforms, and/or food labels. Under the *Calorie Labelling Regulations*, businesses are required to include the energy content of the food in kilocalories (kcal), reference the size of the portion that the calorie information relates to, and include the statement: "*adults need around 2,000 kcals a day*". The UK Government has published an implementation guidance Calorie labelling in the out of home sector with many practical examples for businesses and foods covered.

To which food businesses do the Calorie Labelling Regulations apply?

Regulation 7(1) of the *Calorie Labelling Regulations* defines "*qualifying business*", which refers to the businesses required to display calorie information in relation to food, as a business which "*on the first day of that financial year* […] *has 250 or more employees*". According to Regulation 7(2) of the *Calorie Labelling Regulations*, certain businesses are exempt (*i.e.*, educational institutions; canteens at a workplace; military establishments or criminal justice accommodations; hospitals or other medical institutions; and care homes). Paragraphs 4 to 7 of Regulation 7 of the *Calorie Labelling Regulations* address the question of franchise agreements according to which, most importantly, many fast-food restaurants belonging to a restaurant chain operate. Regulation 7(4) of the *Calorie Labelling Regulations* provides that "*For the purposes of determining how many employees a business has, a business that is carried on pursuant to a franchise agreement is to be treated as part of the business of the franchisor and not as a separate business carried on by the franchisee*".

The types of businesses covered include: 1) Restaurants, fast food outlets, cafes, and pubs; 2) Home delivery services and third party applications selling food that is in scope of the legislation; 3) Cafes and takeaways within larger shops and venues, such as supermarkets, department stores, and entertainment venues such as cinemas; 4) Specialist food stores, delicatessens, sweet shops and bakeries; 5) Contract catering – for example, for events and canteens; and 6) Domestic transport businesses, including planes, trains, ferries and other forms of water transport within the UK.

The inclusion of food sold online in the Calorie Labelling Regulations

The calorie labelling requirements extend to food that is sold on a website or mobile application, including third party delivery applications. Where food in scope of the Regulations is sold on a website or mobile application, the business responsible for that website or mobile application (the "*remote provider*"), irrespective of the size of their business, is required to display the calorie information of food offered for sale by any qualifying business. Where the remote provider offers for sale food, which another business has provided, such as third-party delivery applications, the business providing the food must give the remote provider the calorie information for display on the website or mobile application.

Enforcement and penalties

The *Calorie Labelling Regulations* will be enforced by local authorities in England, with the UK Department of Health and Social Care supporting them. Local authorities are encouraged to first have conversations with those businesses that are not complying with the rules. If needed, local authorities can then issue improvement notices, providing the business with the opportunity to secure compliance. In case of non-compliance, the enforcement authority may impose a civil sanction under the *Regulatory and Sanctions Act 2008* of a fixed monetary penalty of GBP 2,500 as an alternative to criminal prosecution.

Rules relating to calorie labelling for food and drink served outside of the home in the EU and elsewhere

In the EU, there are no common rules regarding the labelling of food and drink served outside of the home. Pre-packed food is governed by *Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers* (hereinafter, FIR). According to Article 1(3)(2) of the FIR, the Regulation "*shall apply to all foods intended for the final consumer, including foods delivered by mass caterers, and foods intended for supply to mass caterers*". Food items that are not prepacked food are those that do not fall within the definition of prepacked food in Article 2(2) of the FIR. This includes, but is not limited to, food without packaging, food packed on the sales premises at the consumer's request, and food prepacked for direct sale (*i.e.*, food that is packed before being offered for sale on the site on which it is sold). Article 44(1) of the FIR concerns "*National measures for non-prepacked food*" and provides that: "*1. Where foods are offered for sale to the final consumer or to mass caterers without prepackaging, or where foods are packed on the sales premises at the consumer's request or prepacked for direct sale: (a) the provision of the particulars specified in point (c) of Article 9(1)* [i.e., ingredients] *is mandatory; (b) the provision of other particulars referred to in Articles 9 and 10* [i.e., all other labelling particulars including a nutrition declaration] *is not mandatory unless Member States adopt national measures requiring the provision of some or all of those particulars or elements of those particulars*". Paragraph 2 of Article 44 of the FIR permits EU Member States to adopt national measures concerning the means through which the particulars or elements of those particulars specified in Article 44(1) of the FIR are to be made available and, where appropriate, their form of expression and presentation.

Outside of the EU, mandatory menu labelling has been introduced in some Australian States (*i.e.*, New South Wales (NSW), South Australia, and the Australian Capital Territory). In the US, Section 4205 on "*Nutrition Labeling of Standard Menu Items at Chain Restaurants*" of the 2010 Patient Protection and Affordable Care Act applies to restaurants or similar retail food

establishments that are part of a chain with 20 or more locations doing business under the same name.

Support and Criticism of the Calorie Labelling Regulations

Diabetes UK, a charity for people living with diabetes in the UK, reportedly stated that it hopes that the new legislation would "*bring these large, out-of-home businesses more in line with the food retail sector when it comes to giving people clear calorie information for the food they buy, hopefully leading to improved menus and healthier options*".

According to reports, there is evidence that calorie labelling has only limited, short-term impacts on consumption, while creating long-term discomfort for people with or recovering from eating disorders. Eating disorders affect between 1.25 and 3.4 million people in the UK. A survey of more than 1,000 people with an existing or past eating disorder, or those caring for them, found that 93% felt that the new regulation would have a negative or very negative impact on them. There is some criticism that the risk posed by such labelling to those with eating disorders has not been taken into account. However, it must be noted that, according to Regulation 5(7)(b) of the *Calorie Labelling Regulations*, customers have the option to request a menu without calorie information in restaurants, cafes, and takeaways.

Outlook

The *Calorie Labelling Regulations* extend to England and Wales, but apply to England only. There appear to be no plans to extend them to other UK territories. There are also no indications that the introduction of calorie labelling for food and drink served outside of the home is being discussed at the EU level. Calorie labelling is also not among the various EU proposals under the *Farm to Fork Strategy*. EU Member States may, however, consider following the UK's example. Article 44(2) of the FIR, which applies to mass caterers, may serve as legal basis.

Recently adopted EU legislation

Trade Law

- *Council Decision (EU) 2022/781 of 16 May 2022 on the signing, on behalf of the Union, of the Agreement between the European Union and New Zealand pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the tariff-rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union*

Customs Law

- *Commission Implementing Regulation (EU) 2022/788 of 16 May 2022 concerning the classification of certain goods in the Combined Nomenclature*

Trade Remedies

- *Commission Implementing Regulation (EU) 2022/802 of 20 May 2022 imposing a provisional anti-dumping duty on imports of electrolytic chromium coated steel products originating in the People's Republic of China and Brazil*

Food Law

- *Commission Implementing Regulation (EU) 2022/800 of 20 May 2022 amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substances paraffin oils CAS No 64742-46-7, CAS No 72623-86-0 and CAS No 97862-82-3 (1)*

- *Commission Implementing Regulation (EU) 2022/787 of 13 May 2022 entering a name in the register of protected designations of origin and protected geographical indications ['Cancoillotte' (PGI)]*

- *Commission Implementing Regulation (EU) 2022/791 of 19 May 2022 amending Implementing Regulation (EU) 2017/1185 as regards the notification of levels of stocks of cereals, oilseeds and rice*

- *Commission Implementing Decision (EU) 2022/797 of 19 May 2022 authorising the placing on the market of products containing, consisting of or produced from genetically modified maize NK603 × T25 × DAS-40278-9 and its sub-combination T25 × DAS-40278-9, pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council (notified under document C(2022) 3179) (1)*

- *Commission Implementing Decision (EU) 2022/798 of 19 May 2022 authorising the placing on the market of products containing, consisting of or produced from genetically modified soybean MON 87769 × MON 89788 pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council (notified under document C(2022) 3182) (1)*

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