



- **Aviation's contribution to the EU's climate action: Towards the inclusion of the aviation sector in the EU's Emissions Trading Scheme**
- **Expanding preferential trade: ASEAN works on updating its existing ASEAN+1 Free Trade Agreements and seeks to conclude a new partnership with Canada**
- **The World Health Organization's *International Agency for Research on Cancer* (IARC) classifies *aspartame* as a "potential carcinogen"**
- **Recently adopted EU legislation**

## **Aviation's contribution to the EU's climate action: Towards the inclusion of the aviation sector in the EU's Emissions Trading Scheme**

On 5 June 2023, *Directive (EU) 2023/958 of 10 May 2023 amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and the appropriate implementation of a global market-based measure* entered into force as part of the EU's 'Fit for 55' package, with the aim of reducing EU emissions by at least 55% by 2030. The amendment of the EU's Emissions Trading Scheme (hereinafter, ETS) seeks to ensure that the aviation sector contributes to the EU's climate targets in accordance with the *European Green Deal* and the *Commission's 2030 Climate Target Plan*.

The amendments integrate the global market-based *Carbon Offsetting and Reduction Scheme for International Aviation* (hereinafter, CORSIA), agreed within the *International Civil Aviation Organization* (hereinafter, ICAO), into the EU's ETS and apply it to international flights departing from or arriving at an airport inside the European Economic Area (hereinafter, EEA). This inclusion has led to tensions between the EU and some of its trading partners due to the new economic burdens that would fall on businesses operating flights into and out of the EEA. This article delves into the EU's ETS and the impacts of its extension to the aviation sector, in particular with respect to extra-EEA flights that are covered by CORSIA.

### **The EU's Emissions Trading Scheme**

The EU's ETS, established by *Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC*, pursues the objective of reducing greenhouse gas (hereinafter, GHG) emissions in a cost-effective way. The EU's ETS is based on the 'cap-trade system' principle, which involves setting a certain cap on the amount of GHGs that specific sectors may emit. Within the cap, the companies covered by the ETS system may receive free of charge or purchase, through public auctions, emission allowances, which they can subsequently trade with other covered companies. The cap is then linearly reduced over time, so that the total emissions decrease (see *Trade Perspectives*, [Issue No. 5 of 10 March 2017](#)). Certain sectors benefit from the allocation of free allowances.

The EU's ETS operates in all EU Member States, as well as in the countries of the EEA, namely Iceland, Liechtenstein, and Norway. A growing number of sectors is covered by the ETS, including some of the energy-intensive industry sectors, such as oil refineries, steel works, and the production of iron, aluminium, metals, and cement.

## The integration of the aviation sector into the ETS

*Directive (EU) 2023/958* will amend *Directive 2003/87/EC* with respect to aviation in a number of different ways, notably by: 1) Establishing a gradual phasing out of free ETS allowances, ultimately reaching a full auctioning regime from 2026; 2) Introducing an obligation for operators to report non-CO<sub>2</sub> aviation emissions (e.g., oxides of nitrogen and soot particles); and 3) Recognising and integrating CORSIA into the ETS, given the important role that it currently plays as a global offsetting scheme for aviation, while assessing its '*environmental integrity*' in the longer term, as well as its degree of convergence with the objectives established by the ETS. In this regard, the Commission is required to report, by 1 July 2026, on the implementation and enforcement of CORSIA. The European Parliament adopted *Directive (EU) 2023/958* on 18 April 2023 and the Council of the EU adopted it on 25 April 2023. EU Member States now have until 31 December 2023 to transpose it into their respective national law.

Currently, intra-EEA flights are covered by the EU's ETS, while derogations still exist for extra-EEA flights. Since 1 January 2021, all extra-EEA flights have been covered by the voluntary pilot phase of CORSIA, which does not necessarily create offsetting obligations to all extra-EEA flights, as it would be intended by the EU's ETS amendments, due to the level of State participation in CORSIA as well as domestic law and institutions' capacity to monitor and enforce carbon offsetting obligations.

The revision of the EU's ETS with respect to the aviation sector would ensure the application of CORSIA to international flights departing from or arriving at an airport inside the EEA from 2026. By 1 July 2026, the Commission is required to submit a report in which the relationship between the EU's ETS and CORSIA will be further delineated by the means of a legislative proposal to amend *Directive (EU) 2023/958* "*where appropriate*". The Commission's report to the European Parliament and to the Council is to "*assess the environmental integrity of ICAO's global market-based measure*", including with respect to its ambition to meet the targets established by the Paris Agreement, as well as "*the level of participation in offsetting under CORSIA, its enforceability, transparency, the penalties for non-compliance, the processes for public input, the quality of offset credits, monitoring, reporting and verification of emissions, registries, accountability as well as rules on the use of biofuels*". If deemed insufficient, notably due to "*States applying CORSIA in a less stringent manner in its domestic law, or failing to enforce CORSIA provisions in a manner equal to all aircraft operators pursuant to the EU's Directive*", the EU reserves the prerogative to complementarily apply its ETS in order to achieve the policy goals of '*net-zero carbon emissions by 2050*'. From January 2027, the EU's ETS is to be extended to extra-EEA flights "*where the evaluation report finds CORSIA to be insufficient*".

*Directive (EU) 2023/958* integrates CORSIA into the EU's ETS while conditioning CORSIA's long-term application on further assessment of its effectiveness and '*environmental integrity*'. The Directive confers the Commission implementing powers to assess and ensure the existence of uniform conditions for the establishment of a level playing field on routes between two different States applying CORSIA.

Studies [estimate](#) that the aviation sector is "*responsible for nearly 4% of the EU's total CO<sub>2</sub> emissions*", representing "*the second biggest contributor to transport emissions, after road transport*". As the ETS has been designed as a mechanism to reduce emissions in the EU and the EEA countries, "*applying it to a mobile, international business sector like aviation has always been controversial*" and, therefore, the inclusion of the aviation sector in the EU's ETS has been a source of tension since the EU's first endeavours in this regard.

In 2012, aviation emissions were included in the EU's ETS, as foreseen in *Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community*. It was a pioneering move in relation to all other global economies and required international airlines to “surrender ETS emissions allowances for any flights into or out of the European Union”. However, it faced strong opposition by “several airlines and airline associations” based in the EU's trading partners. In 2012, some of the EU's trading partners opposed the new obligations and, in January 2012, “the US Congress adopted a law prohibiting US airlines from participating in the EU ETS” and “China reportedly threatened to cancel orders made with the EU-based Airbus Group”.

Given the controversy, the Administrative Division of the UK's High Court requested the Court of Justice of the EU (hereinafter, CJEU) to “give a preliminary ruling on the validity of Directive 2008/101”. In its decision in [case C-366/10](#), the CJEU ruled in favour of the planned inclusion of the aviation sector in the EU's ETS, following an evaluation of its validity on the grounds of international law and agreements, which opponents claimed were infringed upon.

In 2013, the EU adopted *Decision 377/2013/EU*, which suspended the application of the ETS for extra-EEA flights “in expectation of a global market-based mechanism for aviation emissions”. In fact, such mechanism was envisaged in October 2013, with a decision by the 38<sup>th</sup> ICAO Assembly “to work towards developing a global market-based mechanism” to address international aviation emissions. Consequently, *Regulation (EU) No 421/2014* suspended the application of the EU's ETS to extra-EEA flights and *Regulation (EU) 2017/2392* prolonged the derogation until 2023, coinciding with the initial stages of the operationalisation of CORSIA.

CORSIA was finally agreed upon at the 39<sup>th</sup> ICAO Assembly in October 2016, with its operationalisation having started in 2021 with a pilot phase. CORSIA aims at ensuring the “stabilisation of aviation emissions by offsetting emissions above the pre-defined baseline”. Aircraft operators are subject to offsetting requirements determined by the CO<sub>2</sub> emitted on flights, which include the purchase of carbon credits, monitoring and reporting emissions to the relevant national authorities. CORSIA is being implemented in three stages due to the need to accommodate “the special circumstances and respective capabilities of States, in particular developing States, while minimizing market distortion”: 1) A pilot phase, from 2021 to 2023; 2) The first phase, from 2024 to 2026; and 3) The second phase, to be operational from 2027 to 2035. The phases differ in terms of participation: During the pilot and the first phases, participation is voluntary, and, during the second phase, CORSIA offsetting will apply to all ICAO's Member States, with two exceptions based on aviation-related (e.g., Member States' individual share of international aviation activities in “Revenue Tonne Kilometres”) and socio-economic criteria (e.g., Member States defined as Least Developed Countries and Small Island Developing States). Under CORSIA, airlines will be “required to monitor and report emissions on all international routes”. Due to its “route-based” format, “offsetting only applies if both the country of departure and arrival are participating in CORSIA”.

### **The new approach for aviation emissions in the EU**

In the context of the amendments to the EU's ETS on the basis of *Directive (EU) 2023/958*, a significant portion of the implementation of the offsetting obligations still rests on the upcoming Commission's assessment of CORSIA and whether it can be relied upon as a global agreement covering emissions from international flights that sufficiently aligns with the goals established by the EU's ETS. From 2027, the Commission will apply the EU's ETS to emissions from departing flights to third countries that do not apply CORSIA, as well as in case the Commission determines that CORSIA has not been sufficiently “strengthened” with a view to achieving its “long-term aspirational goal towards meeting the Paris Agreement goals”, or “if the States listed in an implementing act to be adopted by the Commission represent less than 70% of international aviation emissions”.

On 18 April 2023, the IATA Regional Vice President for Europe, *Rafael Schwartzman*, published an [opinion piece](#) regarding the position of the European Parliament on the EU's ETS with respect to the inclusion of the aviation sector. Vice President *Schwartzman* explained that "Governments, including European governments, at the International Civil Aviation Organization (ICAO) have committed to ensuring the success of ICAO's CORSIA as the single global market-based measure for reducing aviation emissions". However, Vice President *Schwartzman* notes that "a review will extend [the application of ETS] to all flights into and out of the EU after 2026, unless the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) is 'positively evaluated'".

According to Vice President *Schwartzman*, the EU's position in this respect "creates potential competitive distortions to the market" and "is not helping the global approach that this issue requires". Further, Vice President *Schwartzman* stressed that "airlines are concerned about the impartiality and objectivity of any review and evaluation the EU may undertake of CORSIA" and, therefore, Vice President *Schwartzman* considers it "essential that the EU drop the link between the scope of EU ETS and a set of unilateral 'requirements' put on CORSIA. EU governments should stick to the commitments they have repeatedly made at ICAO, which is to make CORSIA a success and encourage its global adoption as swiftly as possible. Holding CORSIA hostage is failing in that duty".

### **The next steps**

Economic operators whose business activities include commercial flights into and out of the EEA should be mindful of the impacts that the European Commission's assessment of CORSIA could have on their operations, including in a scenario where the Commission assesses CORSIA's environmental integrity negatively.

### **Expanding preferential trade: ASEAN works on updating its existing ASEAN+1 Free Trade Agreements and seeks to conclude a new partnership with Canada**

The Association of Southeast Asian Nations (hereinafter, ASEAN), consisting of Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam, is a fast-growing region. In 2022, ASEAN was ranked as the fifth-largest regional economy in the world and, in the same year, had a collective GDP of USD 3.6 trillion. To enhance trade and establish itself in the global supply chains, ASEAN has concluded seven Free Trade Agreements (hereinafter, FTAs) with its Dialogue Partners, namely six so-called ASEAN+1 FTAs and the *Regional Comprehensive Economic Partnership* (RCEP). ASEAN is currently in the process of upgrading the ASEAN+1 FTAs with China, South Korea, as well as with Australia and New Zealand, while India has also expressed its interest in upgrading its FTA with ASEAN. In parallel, ASEAN has launched trade negotiations for a new FTA with Canada.

#### ***ASEAN's economic integration agenda, and existing trade agreements***

In 2003, ASEAN Member States (hereinafter, AMSs) established the *ASEAN Economic Community* (AEC) with the objective of establishing a single market and a production base, enhancing equitable economic development, and facilitating ASEAN's integration into the global economy. To facilitate the free movement of goods, services, investment, capital and labour within the ASEAN region, AMSs concluded several trade agreements, notably the *ASEAN Trade in Goods Agreement* (ATIGA). Through the conclusion of FTAs with non-ASEAN trading partners, ASEAN aims at further strengthening its participation in the global supply chains, fostering ASEAN centrality, and increasing the attractiveness of its market for foreign investments.

To date, six ASEAN+1 FTAs have been concluded with some of the world's major economies, namely: 1) The *ASEAN-China FTA* (ACFTA), which entered into force in July 2005; 2) The



ASEAN-Japan FTA (AJCEP), which entered into force in December 2008; 3) The ASEAN-New Zealand and Australia FTA (AANZFTA), which entered into force in January 2010; 4) The ASEAN-India FTA (AIFTA), which entered into force in January 2010; 5) The ASEAN-Republic of Korea FTA (AKFTA), which entered into force in January 2010; and 6) The ASEAN-Hong Kong FTA (AHKFTA), which entered into force in June 2019. To further support trade and economic cooperation in the Indo-Pacific region and to update their trade relationship, the ASEAN Member States and certain ASEAN+1 Dialogue Partners, namely Australia, China, Japan, South Korea, and New Zealand, negotiated the *Regional Comprehensive Economic Partnership* (RCEP), which has fully entered into force for all Parties, except for Myanmar, on 1 June 2022 (see *Trade Perspectives*, Issue No. 4 of 28 February 2022).

### **The upgrade of the ASEAN+1 FTAs**

The ASEAN+1 FTAs, with the exception of the *AHKFTA*, are rather outdated as they were concluded almost twenty years ago and lack chapters or provisions on a number of ‘*emerging*’ trade issues, such as digital trade and trade and sustainable development. Since the conclusion of these agreements in the early 2000 years, individual AMSs have concluded bilateral FTAs with certain trading partners, such as the *Indonesia-Australia Comprehensive Economic Partnership Agreement*, which entered into force on 5 July 2020, and provides modern rules on digital trade. Therefore, to keep up with the flurry of current trade developments and to address current trade issues, ASEAN is working on the upgrade of existing FTAs, namely the *ACFTA* with China, the *AKFTA* with South Korea, and the *AANZFTA* with Australia and New Zealand.

On 13 November 2022, ASEAN and China had announced the launch of negotiations for the upgrade of the *ACFTA*, in order to introduce new issues that had not been covered in the original agreement, such as digital economy, green economy, supply chain connectivity, competition, consumer protection, and micro, small, and medium-sized enterprises. The Secretary-General of the ASEAN-China Centre, *Shi Zhongjun*, stated that the upgrade of the *ACFTA* would “*focus on trade and investment liberalization and facilitation, digital economy, green economy and industrial cooperation, where digital economy and green economy represent new areas of cooperation that deserve special attention*”. The first round of negotiations was held in April 2023.

On 13 November 2022, ASEAN, Australia, and New Zealand announced the substantive conclusion of negotiations to upgrade the *AANZFTA*, with the plan to sign the upgraded FTA in 2023. According to the Government of New Zealand, the upgrade of the *AANZFTA* aims at modernising the Agreement in order to further reduce trade barriers for businesses. A [press release](#) issued by the Government of New Zealand highlighted that the update: 1) Addresses trade barriers, including through “*modern approaches to managing supply chains like direct consignment and third party invoicing, and introducing commitments to address and reduce non-tariff barriers that add red tape to businesses*”; 2) Improves trade facilitation through, *inter alia*, expedited Customs procedures, such as clearing perishable goods within six hours of their arrival and new options for proof of origin of goods; and 3) ‘*Deliver[s] on Trade for All*’ by introducing new, inclusive and progressive provisions, such as a framework for cooperation on environment, labour standards, and women’s economic empowerment. The upgrade will also introduce three new chapters into the *AANZFTA*, namely on government procurement, on micro, small, and medium-sized enterprises, and on trade and sustainable development.

### **Towards a new Agreement with Canada**

In addition to upgrading existing trade agreements, ASEAN is currently negotiating a new preferential trade agreement with Canada, its Dialogue Partner since 1976. In 2021, ASEAN was Canada’s fourth-largest trading partner for trade in goods with a value of USD 24 billion. According to a 2018 [Joint Feasibility Study for a Canada-ASEAN FTA](#), an Agreement that were to include “*goods liberalization, a reduction of NTMs and improvements to trade facilitation*” would increase Canada’s GDP by USD 5.1 billion and ASEAN’s GDP by USD 39.4 billion. The

Agreement would also increase the value of ASEAN's exports to Canada by USD 3.36 billion and Canada's exports to ASEAN by USD 3.18 billion.

On 16 November 2021, Canada and ASEAN announced the launch of negotiations for an FTA and held the first round of negotiations in August 2022. In *Canada's Objectives for Negotiations*, Canada has mapped comprehensive areas to be covered by the FTA with ASEAN, namely digital trade, labour, environment, trade and gender, and trade and indigenous people. If the aforementioned chapters, notably on trade and gender, and trade and indigenous people were included in the final text of the *ASEAN-Canada FTA*, the Agreement would be the first Agreement concluded by ASEAN to include such provisions. Furthermore, in the chapter on the environment, Canada proposes to include "comprehensive and enforceable environment commitments".

### ***Despite the RCEP, there is still a need to upgrade the relevant agreements***

While the RCEP has introduced new chapters and commitments, such as on electronic commerce, it appears that China, New Zealand, and Australia remain interested in updating their respective agreements with ASEAN. One of the reasons appears to be the lack of provisions on certain emerging issues, such as on labour and environment, which are increasingly being included in recent trade agreements.

In terms of tariff liberalisation, a [paper](#) published by the *Economic Research Institute for ASEAN and East Asia* highlights that, on average, tariff elimination under the RCEP is lower than in the ASEAN+1 FTAs at 91% of tariff lines, whereas the ASEAN+1 FTAs eliminate, on average, 94% of tariff lines. Notably, the RCEP does not provide for a "common concession rule" regarding tariffs or a 'most-favoured nation' commitment, allowing Parties to set different preferential tariff rates for different Parties. Hence, ASEAN+1 trading partners appear to prefer the increased flexibility and room for deeper commitments provided by upgrading their respective FTAs with ASEAN.

### ***Possible upgrades of other ASEAN+1 FTAs?***

In August 2020, ASEAN and India agreed to initiate discussions to review the *AIFTA*. India's Ministry of Commerce and Industry [noted](#) that the review of the *AIFTA* aimed at making the Agreement "more user-friendly, simple, and trade facilitative for businesses" and sought the modernisation of the Agreement through the inclusion of commitments on "contemporary trade facilitative practices, and streamlined customs and regulatory procedures".

Most recently, in July 2023, as part of India's efforts to renegotiate the *AIFTA*, India initiated discussions with ASEAN to address concerns over the rules of origin and trade imbalance. In this context, India noted that there was a significant increase in the trade deficit with ASEAN, as, in 2023 alone, the trade gap between ASEAN and India had reached nearly USD 43 billion. The upgrade of the *AIFTA* would be timely, as it has been over ten years since its entry into force and considering that India is not a party to the RCEP, having dropped out from the negotiations in 2019.

In April 2023, ASEAN's Deputy Secretary-General for the ASEAN Economic Community, *Satvinder Singh*, stated that ASEAN and South Korea were also in the process of upgrading the *AKFTA*, so as to strengthen global supply chains and to help South Korean businesses to diversify their supply chains throughout the ASEAN region.

### ***Importance of chapters on digital trade and sustainable development in ASEAN FTAs***

The upgrades of both the *ACFTA* and *AANZFTA* address similar 'emerging' trade areas that are becoming increasingly important for trade, namely cooperation on trade and sustainable development, as well as digital trade. With regard to digital trade, ASEAN's digital economy is growing rapidly, with over 460 million digital consumers in the region and electronic commerce (e-commerce) as one of the leading sectors in the digital economy. In this context, e-commerce

sales in ASEAN are expected to amount to USD 153 billion by 2025. Therefore, stronger commitments are relevant to address digital trade and should be incorporated into the FTAs between ASEAN and its trading partners in order to facilitate trade in this growing digital market, including when it comes to China, which is the largest e-commerce market globally, with 710 million e-commerce consumers and transactions with a total value of more than USD 2.29 trillion in 2020. The inclusion of a chapter on digital trade would open up opportunities for the ASEAN digital market by providing legal certainty for businesses, providing a secure online environment for consumers, as well as removing unjustified barriers to digital trade. Last, but not least, due to increasing awareness of environmental issues, a chapter on sustainability commitments in trade would also, arguably, need to be included in the upgraded ASEAN+1 FTAs, given that it has become a standard chapter in the agreements concluded by most of ASEAN's key trading partners and given that such disciplines are growing in number and depth around the world.

### **Way forward**

Through modernising its existing FTAs and concluding new FTAs with other trading partners, ASEAN could become more attractive to investments and strengthen its presence and role in the global market and supply chains. Interested stakeholders should monitor and contribute to the negotiations to upgrade the *ACFTA* with China, the forthcoming text of the upgraded *AANZFTA* with Australia and New Zealand, the trade negotiations with Canada, as well as the possible negotiations to upgrade the *AIFTA* with India and the *AKFTA* with South Korea.

### **The World Health Organization's *International Agency for Research on Cancer (IARC)* classifies *aspartame* as a "potential carcinogen"**

On 14 July 2023, the World Health Organization's (hereinafter, WHO) *International Agency for Research on Cancer* (hereinafter, IARC) classified the sweetener *aspartame* as a "potential carcinogen", a classification that had previously already been criticised by the food industry around the world. The sweetener *aspartame* is a common ingredient in various foods and drinks, including soft drinks, chewing gums, as well as cough drops, and toothpastes. On 14 July 2023, the Joint WHO/Food and Agriculture Organization's *Expert Committee on Food Additives* (hereinafter, JECFA) published a comprehensive food safety review of *aspartame* and no conclusions on the safety of *aspartame* should be drawn until both reports are properly reviewed in detail.

### **The sweetener *aspartame* is authorised in the EU as a food additive**

*Aspartame* is a sweetener authorised in the EU as a food additive (E 951) under *Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives* to be used in foodstuffs such as drinks, desserts, sweets, dairy, chewing gums, energy-reducing and weight control products, and as a table-top sweetener. *Aspartame* was previously evaluated by the JECFA, most recently in 1981, by the EU's *Scientific Committee for Food* (hereinafter, SCF), most recently in 2002, and by the *European Food Safety Authority* (hereinafter, EFSA), most recently in 2011. Both the JECFA and the SCF established an acceptable daily intake (hereinafter, ADI) for *aspartame* of 40 mg/kg body weight (bw)/day. Article 32 of *Regulation (EC) No 1333/2008* requires that food additives be subject to a safety evaluation by the EFSA before they are permitted for use in the EU.

A programme for the re-evaluation of food additives that were already permitted in the EU before 20 January 2009 has been set up under *Commission Regulation (EU) No 257/2010 setting up a program for the re-evaluation of approved food additives in accordance with Regulation (EC) No 1333/2008*. In the course of the re-evaluation of *aspartame*, the EFSA's *Panel on Food Additives and Nutrient Sources added to Food (ANS)* was asked to deliver a scientific opinion on *aspartame* as a food additive. In its *Scientific Opinion of 28 November 2013 on the re-evaluation of aspartame as a food additive*, the ANS Panel noted, *inter alia*,

that there was no epidemiological evidence for possible associations of *aspartame* with various cancers in the human population. The ANS Panel concluded that *aspartame* was not a safety concern at the current aspartame exposure estimates or at the ADI of 40 mg/kg bw/day and that there was no reason to revise the ADI of *aspartame*.

### ***The International Agency for Research on Cancer's assessment***

On 14 July 2023, the WHO published the [Summary of findings of the evaluation of aspartame at the International Agency for Research on Cancer \(IARC\) Monographs Programme's 134<sup>th</sup> Meeting, and the Joint FAO/WHO Expert Committee on Food Additives \(JECFA\) 96<sup>th</sup> meeting](#). The detailed result of both evaluations has been made available together, on 14 July 2023 by [The Lancet Oncology](#), and in a simultaneous publication of the [JECFA findings](#) on the WHO website.

According to a [statement](#) by the WHO of 29 June 2023, the IARC has assessed the potential carcinogenic effect of *aspartame* and, following this finding, the JECFA would “*update its risk assessment exercise on aspartame, including the reviewing of the acceptable daily intake and dietary exposure assessment for aspartame*”.

The IARC classified *aspartame* as possibly carcinogenic to humans on the basis of limited evidence for cancer in humans (specifically, for hepatocellular carcinoma, which is a type of liver cancer). There was also limited evidence for cancer in experimental animals and limited evidence related to the possible mechanisms for causing cancer. Citing the results of new assessments of the health impact of *aspartame*, the IARC states that it had “*limited evidence*” that *aspartame* could cause cancer in humans. The Director of the WHO's *Department of Nutrition and Food Safety*, Dr. *Francesco Branca*, said in a [statement](#) that “*potential effects have been described that need to be investigated by more and better studies*”.

The separate assessment by the JECFA found that, at the current amounts commonly used by consumers, the safety of *aspartame* is not a major concern. The JECFA reaffirmed the acceptable daily intake of 40 mg/kg body weight/day. Therefore, the JECFA reaffirmed that *aspartame* is safe for a person to consume within such limit per day. For example, the JECFA stated that “*with a can of diet soft drink containing 200 or 300 mg of aspartame, an adult weighing 70kg would need to consume more than 9-14 cans per day to exceed the acceptable daily intake, assuming no other intake from other food sources*”.

The IARC and WHO announced that they would continue to monitor new evidence and encourage independent research groups to develop further studies on the potential association between *aspartame* exposure and consumer health effects.

### ***The IARC is responsible for assessing hazard, rather than risk***

Regarding the *International Agency for Research on Cancer's* listing of the food additive *aspartame* as “*possibly carcinogenic to humans*”, it must be noted that the IARC's *Monographs on the Identification of Carcinogenic Hazards to Humans* assess the strength of the available evidence that an agent (*i.e.*, “*any chemical, physical, or biological entity or exposure*”) can cause cancer in humans, based on three streams of evidence: 1) Limited evidence of carcinogenicity in humans; 2) Sufficient evidence of carcinogenicity in experimental animals; and 3) Strong evidence that the agent exhibits key characteristics of carcinogens. According to the [Preamble to the IARC Monographs](#), a cancer hazard is an agent that is capable of causing cancer, whereas a cancer risk is an estimate of the probability that cancer will occur, given some level of exposure to a cancer hazard. The Monographs assess the strength of evidence that an agent is a cancer hazard. The distinction between hazard and risk is fundamental. IARC's Monographs identify cancer hazards even when risks appear to be low in some exposure scenarios. This is because the exposure may be widespread at low levels, and because exposure levels in many populations are not known or documented.



The IARC currently uses a [four-tiered system](#) in its Monographs for grading the carcinogenic nature of 'agents': For Class 1) "*Carcinogenic to humans*", 126 agents are currently listed in this category, which applies whenever there is sufficient evidence of carcinogenicity in humans; For Class 2A) "*Probably carcinogenic to humans*", 94 agents are listed in this category, which generally applies when at least two evaluations have been made, including at least one that involves either exposed humans or human cells or tissues; For Class 2B) "*Possibly carcinogenic to humans*", 322 agents are listed in this category, which generally applies when only one evaluation has been made; and For Class 4) "*Not classifiable as to its carcinogenicity to humans*" 500 agents are listed. The "*definitions*" of the groups are set out in the [Preamble to the IARC Monographs](#).

The IARC categorised *aspartame* as a Class 2B carcinogen, which means that it "*possibly*" causes cancer. For context, according to the [IARC database](#) of human carcinogens, Class 2B also includes aloe vera extract, pickled vegetables, talc-based body powder, kava extract, ginkgo biloba extract, nickel compounds, and many other agents.

As the IARC prepared its decision on *aspartame*, the JECFA, which is the WHO's internal body responsible for food additive recommendations, has been conducting its own review. Both the JECFA and the IARC decisions were released on 14 July 2023. The JECFA did not change the recommended daily intake and dietary exposure assessment for *aspartame*, and confirmed the 1981 assessment, which established an acceptable daily intake of 40 mg per kilogram of body weight.

### ***Complaints from the food industry and possible damage to reputation***

On 29 June 2023, various news agencies reported that the IARC was expected to classify *aspartame*, as a "*potential carcinogen*". The reporting from international media was called "*misleading*" and led to complaints by the food industry. In this context, the *International Sweeteners Association* expressed that it was "*seriously concerned about the classification*" and emphasised that *aspartame* had been "*extensively researched and declared safe by over 90 food safety agencies worldwide*". Separately, the *International Council of Beverages Associations*, a trade organisation representing the non-alcoholic beverage industry, criticised that the classification "*may mislead consumers into choosing sugar over low-sugar options*".

Meanwhile, industry members and scientists are convinced that the prior research on *aspartame* being safe still stands and fear that the "*misleading opinion*" might drive consumers away from *aspartame*, which could lead to more sugar consumption. It has been said that "*Sugar-free drinks that do not contain aspartame may benefit [from the controversy] in the short run, but the zero sugar market may weaken as a whole in the long term due to consumer anxiety*".

### ***The dose makes the poison***

The IARC is not a food safety body and is responsible for assessing hazard, rather than risk, meaning that its analysis does not consider whether the current levels of *aspartame* used in soft drinks and confectionery increase the risk of cancer or not. The IARC indicates that an agent has the potential to cause cancer, but the IARC does not assess whether it is likely to cause cancer when consumed in a realistic quantity. It is important to note that, only because an agent may cause cancer, it does not mean that it automatically does so if exposed is limited to certain (low) quantities. In simple terms, it is the dose that makes the poison.

Interested stakeholders should monitor the developments in relation to *aspartame*. If new scientific evidence emerges in relation to the safety of a food additive, the Commission had announced in the past that it would consider taking measures on any food additive, in line with the rules laid down by *Regulation (EC) No 1333/2008* on food additives.

## Recently adopted EU legislation

### Trade Law

- *Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market*

### Trade Remedies

- *Commission Implementing Regulation (EU) 2023/1404 of 3 July 2023 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel refillable kegs originating in the People's Republic of China*
- *Commission Implementing Decision (EU) 2023/1431 of 30 June 2023 concerning exemptions from the extended anti-dumping duty on certain bicycle parts originating in the People's Republic of China pursuant to Regulation (EC) No 88/97*
- *Commission Implementing Regulation (EU) 2023/1444 of 11 July 2023 imposing a provisional anti-dumping duty on imports of steel bulb flats originating in the People's Republic of China and Türkiye*
- *Commission Implementing Regulation (EU) 2023/1450 of 13 July 2023 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*
- *Commission Implementing Regulation (EU) 2023/1452 of 13 July 2023 imposing a definitive anti-dumping duty on imports of certain continuous filament glass fibre products originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*

### Customs Law

- *Commission Implementing Regulation (EU) 2023/1419 of 4 July 2023 concerning the classification of certain goods in the Combined Nomenclature*
- *Commission Implementing Regulation (EU) 2023/1420 of 4 July 2023 concerning the classification of certain goods in the Combined Nomenclature*
- *Commission Implementing Regulation (EU) 2023/1427 of 4 July 2023 concerning the classification of certain goods in the Combined Nomenclature*

## Food Law

- *Commission Implementing Regulation (EU) 2023/1343 of 30 June 2023 providing for an emergency support measure for the cereal and oilseed sectors in Bulgaria, Hungary, Poland, Romania and Slovakia*
- *Commission Regulation (EU) 2023/1428 of 7 July 2023 amending the Annex to Regulation (EU) No 231/2012 as regards mono- and diglycerides of fatty acids*
- *Commission Implementing Regulation (EU) 2023/1436 of 10 July 2023 concerning the non-renewal of the approval of the active substance dimoxystrobin, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council, and amending Commission Implementing Regulation (EU) No 540/2011 and Commission Implementing Regulation (EU) 2015/408*
- *Commission Implementing Directive (EU) 2023/1438 of 10 July 2023 amending Directives 2003/90/EC and 2003/91/EC as regards the protocols for the examination of certain varieties of agricultural plant species and vegetable species*
- *Commission Implementing Regulation (EU) 2023/1447 of 12 July 2023 amending Implementing Regulation (EU) No 540/2011 as regards the approval periods of the active substances *Bacillus pumilus* QST 2808 and penflufen*
- *Commission Implementing Regulation (EU) 2023/1453 of 13 July 2023 repealing Implementing Regulation (EU) 2021/1533 imposing special conditions governing the import of feed and food originating in or dispatched from Japan following the accident at the Fukushima nuclear power station*

*Felipe Amoroso, Ignacio Carreño, Joanna Christy, Tobias Dolle, Alya Mahira, and Paolo R. Vergano contributed to this issue.*

*Follow us on twitter @FratiniVergano*

To subscribe to *Trade Perspectives*®, please click [here](#). To unsubscribe, please click [here](#).

FRATINIVERGANO specialises in European and international law, notably WTO and EU trade law, EU agricultural and food law, EU competition and internal market law, EU regulation and public affairs. For more information, please contact us at:

FRATINIVERGANO – EUROPEAN LAWYERS

Boulevard Brand Whitlock 144, 1200 Brussels, Belgium. Telephone: +32 2 648 21 61, Fax: +32 2 646 02 70. [www.fratinivergano.eu](http://www.fratinivergano.eu)

*Trade Perspectives*® is issued with the purpose of informing on new developments in international trade and stimulating reflections on the legal and commercial issues involved.

*Trade Perspectives*® does not constitute legal advice and is not, therefore, intended to be relied on or create any client/lawyer relationship.

To stop receiving *Trade Perspectives*® or for new recipients to be added to our mailing list, please contact us at [TradePerspectives@fratinivergano.eu](mailto:TradePerspectives@fratinivergano.eu)

Our privacy policy and data protection notice is available at <http://www.fratinivergano.eu/en/data-protection/>