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## Tariff suspension as a trade policy tool: The EU amends its list of imported goods benefiting from duty suspensions

On 29 December 2023, the EU published the amended list of agricultural and industrial products benefiting from duty suspensions when imported into the EU. The products listed in the Annex to *Council Regulation (EU) 2023/2890 of 19 December 2023 amending Regulation (EU) 2021/2278 suspending the Common Customs Tariff duties referred to in Article 56(2), point (c), of Regulation (EU) No 952/2013 on certain agricultural and industrial products* are allowed to enter the EU either duty-free (*i.e.*, total suspension) or at reduced duties (*i.e.*, partial suspension) during the period of validity of the duty suspension and "*without any limitation as regards their quantity*". In general terms, duty suspensions are intended to make EU companies "*more competitive and to boost economic activity in the EU*" by lowering the cost of raw materials, semi-finished goods, or components that are not available or not sufficiently available in the EU, and which are needed by EU manufacturers to produce finished products. Duty suspensions are not granted for finished products. This article provides an overview of the products currently benefitting from duty suspension and seeks to guide businesses in understanding the conditions for securing a duty suspension.

### *Applying for and approving duty suspensions*

Duty suspensions provide important means to reduce costs for businesses and stand to deliver significant tariff advantages and cost savings to EU industries. *Council Regulation (EU) 2021/2278 of 20 December 2021 suspending the Common Customs Tariff duties referred to in Article 56(2), point (c), of Regulation (EU) No 952/2013 on certain agricultural and industrial products, and repealing Regulation (EU) No 1387/2013* sets the current EU legal framework on duty suspensions. *Regulation 2021/2278* is reviewed and amended twice a year, typically in January and July of each year, to reflect changes requested by EU Member States or on the European Commission's (hereinafter, Commission) own initiative. Prior to these amendments, the Commission accepts and processes applications for duty suspensions submitted by EU Member States, namely by "*15 March for implementation on 1 January of the following year*" and by "*15 September for implementation on 1 July of the following year*". The *Communication from the Commission concerning autonomous tariff suspensions and quotas*

of 13 December 2011, lays down, *inter alia,* the application procedure and the conditions for the granting of duty suspensions.

Notably, the process also involves EU Member State authorities. Businesses interested in obtaining a duty suspension for a product of relevance for their activities must apply to the respective Customs authority in the EU Member State in which they are based. According to the *Communication*, applications to the Commission by EU Member States must be submitted electronically and must contain the Combined Nomenclature (CN) code, a precise product description, as well as additional information regarding the product, such as the "*name and addresses of firms known in the EU approached with a view to the supply of identical, equivalent or substitute products*". Failure to provide essential information can lead to the application's dismissal during the evaluation process.

The specific procedure will vary among EU Member States. For instance, according to the website of Finland's Customs Office, applications by *"individual companies, not by a central organisation for a branch or another association"* must be submitted in English and "*must be made carefully, and the properties of the goods must be described in detail".* Applications that are *"formally correct and meet the requirements"* are then submitted in *"Finland's name"* to the Commission. Importantly, given the review procedure and potential request for additional information, businesses must submit requests to Finland's Customs office "*around one month before the Commission's time limit*".

According to the Commission's *Communication*, the Commission then examines the submitted requests with the support of the *Economic Tariff Questions Group* (*i.e.*, a group of experts from the national administrations of EU Member States), which meets at least three times ahead of the rounds of duty suspensions. EU Member States may submit objections to requests for duty suspensions to the *Economic Tariff Questions Group.* Following the meetings with the *Economic Tariff Questions Group*, the Commission prepares the proposal to amend *Council Regulation (EU) 2021/2278*, which is sent to the Council of the EU.

***Conditions for obtaining duty suspensions***

To accomplish the objectives of the duty suspensions, namely to improve the efficiency and competitiveness of EU industries, to assist companies established in the EU to maintain or create employment, and to modernise their structures, there are a number of requirements that applicants must meet in order for an application for a duty suspension to be approved by the Commission, as laid out in the Commission's *Communication* (see *Trade Perspectives*, Issue No. 15 of 24 July 2015 and Issue No. 15 of 29 July 2016). Typically, duty suspensions are not granted if identical, equivalent, or substitute products are manufactured in sufficient quantities in the EU. Moreover, the relevant product should also not be available in any country with which the EU maintains preferential trade relations under a preferential trade agreement or the EU's Generalised System of Preferences (GSP).

The imported goods must be an integral part of the final product, cannot be intended for sale to end-consumers and must require further substantial processing. In addition, the imported goods concerned may not be covered by an exclusive trading agreement or traded between parties with exclusive intellectual property rights in the goods, or be described in a way which "*contains internal company specific terms such as company denominations, brand names, specifications, article numbers, etc*". These three additional requirements aim at ensuring that tariff suspensions be available to all EU importers and third-country suppliers and, therefore, at avoiding discriminatory treatment. Applicants must also indicate that they have made recent genuine, though unsuccessful, attempts to obtain the goods in the EU. Additionally, goods that are subject to import prohibitions and restrictions, such as under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*, are excluded from duty suspension. Lastly, the requested duty suspension must result in at least EUR 15,000 savings per year for the applicant.

***The most recent round of EU duty suspensions***

Most recently, on 29 December 2023 the EU published *Council Regulation (EU) 2023/2890*, which amends *Council Regulation (EU) 2021/2278*, and which has entered into force on 1 January 2024. The Regulation sets out the duty suspensions applicable to agricultural and industrial products listed in its Annex, which replaces the previous Annex to *Council Regulation (EU) 2021/2278*. On the basis of the consolidated Annex, duty suspensions apply to, *inter, alia*, a number of agricultural commodities, such as bamboo shoots, mushrooms, fruits, and vegetable oils, and numerous chemical substances, and minerals, such as rare earth, titanium dioxide, copper, and lithium nickel dioxide. For each product listed in its Annex, *Council Regulation (EU) 2023/2890* sets out the date for its next mandatory review. According to Article 2(2) of *Council Regulation (EU) 2021/2278*, the Commission reviews duty suspensions "*during the year preceding the date envisaged for mandatory review set out in the Annex".*

Notably, *Council Regulation (EU) 2023/2890* continues to grant duty suspensions to a wide range of mineral raw materials. This appears in line with the EU's need to secure a sustainable supply of raw materials, especially critical raw materials (hereinafter, CRM) needed for the EU's "*green and digital transition*" (see *Trade Perspectives,* Issue No. 6 of 27 March 2023 and Issue No. 23 of 18 December 2023). On 16 March 2023, the Commission had issued its Communication on "*A secure and sustainable supply of critical raw materials in support of the twin transition*", which notes that "*the vast majority of EU CRM imports (92% in value) do not pay import duties, thanks to most-favoured nation (MFN) tariffs set at zero or to trade agreements in force*". However, "*the remaining CRM imports are covered by a tariff ranging between 2-7% for unprocessed (e.g., unprocessed Magnesium: 5%) and 3-9% for a few processed goods (e.g., processed Gallium: 3%)*". The Commission further notes that it would "*follow closely the impact of tariffs on the ability to import CRMs and examine requests for duty suspensions, in light of the objectives of facilitating the diversification of critical raw materials and reducing our dependencies*". Notably, out of the 34 CRMs listed in Annex II to the Commission's *Proposal for a Critical Raw Materials Act* of 16 March 2023, 26 CRMs, including lithium and titanium dioxide, have been granted total duty suspension in *Council Regulation (EU) 2023/2890* with varying dates for mandatory review of the duty suspension, ranging from 31 December 2024 to 31 December 2027.

*Council Regulation (EU) 2023/2890* introduces a number of changes to the Annex of *Council Regulation (EU) 2021/2278*, adding new products for full duty suspension, but also removing products from the list whose duty suspensions the Commission no longer considers to be in the interest of the EU. For instance, the following products were removed from the list of products benefiting from duty suspensions: fruits of the genus *Vaccinium* (*e.g.*, cranberry, blueberry, lingonberry), peas in pods, and inedible used cooking oils consisting of mixtures of vegetable oils for use in the production of biodiesel. At the same time, in terms of new products benefitting from duty suspensions, with the aim to promote "*integrated battery production*" in the EU, *Council Regulation (EU) 2023/2890* grants a partial suspension of duties to certain products related to battery production, such as '*aluminium foil'*, '*cylindrical lithium-ion-accumulators or modules'*, '*lithium-ion polymer accumulator equipped with a battery management system*', and '*lithium-ion rechargeable batteries*', that were not previously listed in the Annex to *Council Regulation (EU) 2021/2278* and whose production in the EU is considered "*inadequate to meet the specific requirements of the user industries*". A mandatory review of those products is set for 31 December 2024 "*in order for that review to take into account the short-term evolution of the battery production sector in the Union*".

***Maximising EU duty suspension benefits***

Duty suspensions are an important opportunity for businesses relying on certain raw materials and are particularly relevant for key technologies, as the new duty suspensions to promote integrated battery production in the EU show. Businesses should carefully assess the goods they rely on and the applicable tariffs. The next round of duty suspensions will be published in July 2024 and the Commission's deadline for those applications was on 15 September 2023. For the January 2025 round of duty suspensions, businesses should now engage and submit their applications to EU Member States' Customs Administrations. EU businesses seeking to

take advantage of EU duty suspensions for the raw materials, semi-finished goods, or components that they need, should seek expert advice in order to successfully lodge an application and manage the related EU procedure.

## Indonesia's new draft Government Regulation to implement its *Personal Data Protection Law*: Paving the way for stronger enforcement of data protection?

On 30 August 2023, the Government of Indonesia published a draft *Government Regulation on Implementing Regulation to Law No. 27 of 2022 on Data Protection* (hereinafter, draft Government Regulation), which will implement the provisions of Indonesia's *Law No. 27 of 2022 on Data Protection* (hereinafter, Personal Data Protection Law) that entered into force on 17 October 2022. The *Personal Data Protection Law* serves as the umbrella law for personal data protection in Indonesia and provides for a transition period of two years to adjust and comply with the new rules. The draft Government Regulation is intended to provide clarity on numerous aspects of the *Personal Data Protection Law*, including the legal basis of processing personal data, cross-border data transfers, and the responsibilities of the Personal Data Protection Institution (hereinafter, Data Protection Institution). The Government Regulation is expected to be issued in early 2024.

### *Indonesia's long-awaited Personal Data Protection Law*

On 17 October 2022, the Government of Indonesia enacted Indonesia's long-awaited *Personal Data Protection Law*. The rules governing personal data protection in Indonesia were previously scattered in various laws and regulations and the absence of clear and detailed rules had contributed to massive data leaks in recent years (see *Trade Perspectives*, Issue No. 22 of 4 December 2022). Consisting of 76 articles and 16 chapters, the *Personal Data Protection Law* governs, most notably, issues related to: 1) Data ownership rights; 2) Obligations of the "*data controller*" (*i.e.*, *any person, public body, or international organisation that exercises control over personal data processing) and the "data processor" (i.e., any person, public body, or international organisation that processes personal data on behalf of the personal data controller);* and 3) The acquisition, processing, and transfer of personal data. Currently, the *Personal Data Protection Law* is still in a transition period until it fully takes effect in October 2024. To implement the *Personal Data Protection Law* and to clarify certain obligations, the Government of Indonesia is preparing implementing regulations, including a Government Regulation and a Presidential Regulation.

### *Scope of the draft Government Regulation*

The draft Government Regulation is a comprehensive regulatory framework designed to operationalise and implement the provisions of the *Personal Data Protection Law*. The draft Government Regulation consists of 10 chapters with more than 200 articles governing, most notably: 1) Personal data processing; 2) Obligations of personal data controllers and processors; 3) Cross-border data transfers; 4) International cooperation; and 5) The authority of the Data Protection Institution. For instance, the draft Government Regulation introduces detailed requirements for cross-border data transfers, notably the requirement of equal or higher-level personal data protection in the destination country.

### *Obligations of personal data controllers*

The *Personal Data Protection Law* lays down the general obligations of personal data controllers, but the draft Government Regulation provides more details on the obligations at each stage of personal data processing, such as the acquisition, storage, transfer, and deletion of personal data. For example, when storing personal data, Article 12 of the draft Government Regulations clarifies that data controllers must, *inter alia,* conduct data encryption and record and/or document the storage location. *Article 20 of the Personal Data Protection Law* stipulates that the legal basis for processing personal data includes consent from the personal data

subject and the fulfilment of legal obligations of the data controllers in accordance with the applicable laws and regulations. Article 46 of the draft Government Regulation clarifies that a data controller will be required to provide a mechanism to obtain consent for the data processing from the data subjects, which could be provided electronically or non-electronically.

Under Articles 32, 40, and 41 of the *Personal Data Protection Law,* data controllers have the obligation to fulfil the requests of data subjects pertaining to, *inter alia*: 1) The access to their personal data that are being processed; 2) The cessation of the processing of personal data in case the data subjects withdraw their consent; and 3) The delay or restriction in the processing of personal data within three days upon request from the data subjects. The related obligations are further detailed by the draft Government Regulation. For instance, the draft Government Regulation clarifies the instances where the data controller may be exempt from delaying or restricting data processing, such as when it would harm the safety of other people, harm national security interests, or harm an ongoing law enforcement process.

In fulfilling the obligations of data controllers, businesses claim that the set deadline is *"burdensome"* and "*too short*", as they may have *"limited capacity and resources"* to comply with such requirements. Businesses also note that the time limit is shorter than international benchmarks, such as under the EU's *General Data Protection Regulation* (hereinafter, GDPR), which accords data controllers one month to process the data subject's requests and allows for this timeframe to be extended by *"two further months where necessary, taking into account the complexity and number of the requests"*. The Executive Director of the *Indonesia Information and Communication Technology Institute*, *Heru Sutadi*, stated that the Government of Indonesia should assess whether certain requests by data subjects would need additional time to be fulfilled, depending on the complexity of such requests.

***The urgent need for a Data Protection Institution***

Given the increasing data leaks and alleged data breaches in Indonesia, Articles 58 to 61 of the *Personal Data Protection Law* call for the establishment of an independent institution under the authority of the President of Indonesia to supervise and enforce the implementation of the *Personal Data Protection Law*. As outlined in Article 199 of the draft Government Regulation, the responsibilities of the Institution will be to: 1) Formulate and establish personal data policies for personal data subjects, controllers, and processors; 2) Supervise the implementation of personal data protection rules; 3) Enforce administrative sanctions for violations of personal data protection; and 4) Facilitate alternative dispute resolution. To date, the Government of Indonesia is still drafting a Presidential Regulation concerning the establishment of the Institution.

Interestingly, the draft Government Regulation introduces an alternative dispute settlement mechanism, along with the relevant procedural rules, for cases relating to personal data protection, allowing individuals to apply for dispute settlement to the Data Protection Institution to agree on: 1) The form and amount of compensation for the violation of the *Personal Data Protection Law*; and 2) Certain actions to guarantee that the loss suffered by the personal data subject will not re-occur (*i.e.*, a written statement explaining that such action will not be repeated). Article 229 of the draft Government Regulation further states that, in facilitating dispute resolution, the Data Protection Institution would prioritise mediation. In this context, the disputing parties will be able to appoint a mediator from either: 1) A list of mediators maintained by the Data Protection Institution; or 2) A professional mediation institution registered with the Institution.

Further details regarding dispute settlement through mediation will be detailed in a Regulation to be issued by the Data Protection Institution. Notably, mediation could help limit the costs incurred by the parties and could encourage the parties to reach a mutually agreeable resolution to their conflict.

***Requirements for cross-border data transfers***

Cross-border data transfers are essential for economic growth in the digital age, notably by allowing businesses and consumers to gain access to technology and services irrespective of their location. However, cross-border personal data transfers are often impeded by regulatory restrictions, such as data localisation legislation and diverging rules on personal data protection. The *Personal Data Protection Law* allows data to be transferred to third countries only if the destination country maintains rules that are equivalent to or higher than the protection accorded under Indonesia's *Personal Data Protection Law*.

According to Articles 184 and 185 of the draft Government Regulation, the assessment of equal or higher-level personal data protection would be carried out by the Data Protection Institution and is to be based on whether the destination country has: 1) Introduced personal data protection legislation; 2) Established a personal data protection supervisory agency; and 3) Made binding international commitments on data protection, including on cross-border data transfer. The Data Protection Institution will be required to establish a list of countries and/or international organisations that have an equivalent or higher level of personal data protection to that of Indonesia. This could be similar to the EU's "*adequacy decisions*" under the EU's GDPR, which allows data to be transferred freely from the EU to third countries that are recognised to have a comparable level of protection of personal data to that in the EU, without being subject to any further conditions or authorisations.

***Alternative basis for cross-border data transfers***

The draft Government Regulation states that, if the requirement of equal or higher-level personal data protection cannot be met, the personal data controller must ensure that the data recipient ensures "*adequate and binding*" personal data protection. This can take the form of: 1) An international agreement between the relevant countries; 2) Standard contractual clauses for personal data protection; 3) Binding group company policies; or 4) Other instruments recognised by the Institution.

Companies increasingly rely on "*standard*" contractual clauses to facilitate data transfers to third countries, which are important to avoid lengthy contractual negotiations. According to Article 187 of the draft Government Regulation, the necessary clauses will be further developed by the Data Protection Institution, but must at least contain: 1) A legal basis for personal data processing; 2) A clause on personal data protection; 3) A notification obligation in case of failure to protect personal data; and 4) An obligation to conduct due diligence on the parties receiving the personal data. When formulating the standard clauses, the Institution could refer to model contractual clauses already developed by other countries or regions, including in the EU and ASEAN (see *Trade Perspectives*, Issue No. 17 of 25 September 2023).

***Way forward***

The issuance of the draft Government Regulation underscores the Government of Indonesia's commitment to safeguarding individual privacy, as well as establishing a strong legal basis for the use of personal data across various sectors. Personal data controllers and processors should take the time to properly understand the future requirements introduced by the *Personal Data Protection Law* and the draft Government Regulation, as well as evaluating their electronic systems, policies and/or rules to ensure compliance.

## France plans to establish new rules obliging retailers to inform consumers about "*shrinkflation*"

On 27 December 2023, France's Ministry of the Economy, Finance and Industrial and Digital Sovereignty notified the European Commission of a draft *Order on informing consumers about the price of products that have undergone a downward change in quantity at unchanged or rising purchase prices* (*i.e., Arrêté relatif à l'information des consommateurs sur le prix des produits dont la quantité a diminué*). The draft Order foresees to require retailers to inform

consumers in case a product has been reduced in size or quantity with its price having stayed the same, an occurrence known as "*shrinkflation*". The article provides an overview of the draft Order, its potential implications, and discusses the context under the applicable EU law.

**The draft Order**

France notified the draft Order to the Commission under the EU's *Technical Regulation Information Service* (TRIS) procedure, set up under *Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society service*.

Article 1(II) of the draft Order states, in relevant part, that "*When offering for sale a pre-packaged consumer product in a constant nominal quantity, the quantity of which has been reduced, and this results in an increase in the price per unit, the distributors (…) shall indicate, in addition to the legal information on the prices in force, directly on the packaging or on a label attached or placed in the vicinity of that product in a visible, legible and in the same font size as that used to indicate the unit price of the product, the following, excluding any other possible formulation: 'For this product, the quantity sold changed from X to Y and its price per (specify the unit of measurement concerned) increased by...% or EUR...' Both X and Y values shall be given, as appropriate, by weight or volume (…)*". The obligation would apply to foodstuffs and non-food products alike for a period of three months from the date on which the product is offered for sale in its reduced quantity.

According to Article 1(I) of the draft Order, French "*Undertakings or groups of natural or legal persons active in the distribution of consumer goods* (…) *who operate, directly or indirectly, a store with a sales area of more than 400 square metres*" would be required to comply with this obligation. As information on prices is an obligation incumbent on sellers, this obligation has been made incumbent on distributors. The notification states that, in terms of quantity, manufacturers "*must ensure that the information given to consumers is fair*". On the one hand, the quantity must be clearly visible and legible on the packaging and, on the other, the weight or volume indicated on the packaging must correspond to the actual quantity of product. As long as these conditions are met, France argues that "*the practice of shrinkflation, i.e. reducing the quantity sold while keeping the same packaging, is not illegal. However, it raises questions about the level of consumer information. In fact, this phenomenon is widely criticised insofar as the reduction in quantity is not announced by manufacturers and is not always apparent to consumers at the time of purchase. As a result, this situation is perceived as being unfair*".

Failure to comply with the Order would trigger an administrative fine of up to EUR 3,000 for a natural person and EUR 15,000 for a legal person. Officials within France's Directorate-General for Competition, Consumption and Fraud Control (DGCCRF) may use the administrative policing powers granted to them by Article L. 521-1 of France's Consumer Code to act on such breaches. In addition, these decisions may be the subject of a publicity measure at the expense of the trader, pursuant to Article L. 521-2 of France's Consumer Code.

**Does the existing EU law adequately address "*shrinkflation*"?**

As stated above, the practice of "*shrinkflation*", which refers to reducing the size or quantity of a product, but keeping its price, does not appear to be illegal, but is considered unfair. The EU has legislated regarding the indication of the selling price and the price per unit of measurement, as well as on the indication of the quantity of goods. To facilitate the comparison of prices for consumers, *Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers* ensures that the selling price and the price per unit of measurement (*i.e.*, the unit price) are indicated for all products offered by traders (*i.e.*, "*any natural or legal person who sells or offers for sale products which fall within his commercial or professional activity*"), to consumers. The selling price must be unambiguous, easily identifiable, and clearly legible. Moreover, in order to inform the consumer of the quantity of product contained in the package, *Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October*

*2011 on the provision of food information to consumers* requires the net quantity of the food and, in the case of food presented in a liquid medium, also the drained net weight, to be indicated on the label.

In the past, for most products, national nominal quantities were allowed to exist alongside "*Community nominal quantities*". For some products, "*Community nominal quantities*" were fixed, excluding national nominal quantities. Following changes in consumer preferences and innovations in prepacking and retailing at EU and national levels, as well as the judgement of the Court of Justice of the European Union of 12 October 2000 in *Case C-3/99 Cidrerie Ruwet* regarding nominal quantities for cider, *Directive 2007/45/EC of the European Parliament and of the Council of 5 September 2007 laying down rules on nominal quantities for prepacked products, repealing Council Directives 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC* liberalised most nominal quantities and packaging sizes in the EU.

A study by the European Parliament on '*Misleading Packaging Practices*' concluded already in 2012 that, *inter alia*, there is widespread abuse by means of deceptive packaging due to the liberalisation of packaging sizes under *Directive 2007/45/EC*. On 19 May 2015, the answer on behalf of the Commission to a question of a Member of the European Parliament regarding the study stated that there was "*other Union legislation in place to protect consumers from misleading product packaging*" and that "*Directive 94/62/EC prohibits the use of excess packaging materials and Directive 2005/29/EC, which applies to business-to-consumer transactions, requires traders to provide consumers with information they need to take informed decisions and prohibits business practices that are likely to deceive consumers*". Given the extensive coverage of existing EU legislation, the Commission considered, at that time, that, where EU Member States "*apply the acquis in full there is no need for further harmonised rules on deceptive packaging*".

Article 6(1) of *Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market* states that "*a commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct*", in relation to elements, such as quantity or price and is likely to cause the consumer to take a transactional decision that he or she would not have otherwise taken. Article 6(1) of *Directive 2005/29/EC*, therefore, covers factually correct information that deceives or is likely to deceive the average consumer and may be applied in case a product's size or quantity has been reduced, but the price has stayed the same. Article 7(1) of *Directive 2005/29/EC* on '*Misleading omissions*' states that "*A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise*". Arguably, omitting that a package has shrunk, while the price remains identical, may be considered misleading under Article 7(1).

Annex I to *Directive 2005/29/EC* lists commercial practices that are "*in all circumstances considered unfair*", but does not currently include misleading packaging practices. Ongoing legislative developments apparently do not address the matter. Although it has been discussed in the past to add misleading packaging practices to Annex I to *Directive 2005/29/EC*, they are not specifically listed as misleading commercial practices in the *provisional agreement of 7 November 2023 resulting from interinstitutional negotiations on a Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information*, which would have clarified the matter of misleading "*shrinkflation*". The issue has also not been addressed in the *Proposal for a Regulation of the European Parliament and of the Council on packaging and packaging waste*, which is intended to repeal *European Parliament and Council Directive 94/62/EC of 20 December 1994 on*

*packaging and packaging waste*. Both legislative procedures are in the final stage of interinstitutional negotiations.

**Commercial aspects**

"*Shrinkflation*" often concerns products such as crisps, coffee, yoghurt, pet food, and toothpaste. In September 2023, major French retailer *Carrefour* affixed "*shrinkflation*" signs onto store shelves in France to point the finger at certain manufacturers and their brands that *Carrefour* said were reducing the size of packets, but not the prices. *Carrefour* has reportedly marked 26 products in its stores in France with the labels, which say: "*This product has seen its volume or weight decrease and the effective price from the supplier increase*". For example, *Carrefour* indicated that a bottle of sugar-free peach-flavoured *Lipton* iced tea, produced by *PepsiCo*, was reduced to 1.25 litres from 1.5 litres, resulting in a 40% effective increase in the price per litre. *Guigoz* infant formula produced by *Nestlé* went from 900 grams to 830 grams, while *Unilever*'s *Viennetta* ice-cream cake shrank to 320 grams from 350 grams. It must be added that the "*shrinkflation*" signs appeared at a time of price negotiations between retailers and food manufacturers. The Director for Client Communication at *Carrefour France* reportedly stated that, "*Obviously, the aim in stigmatising these products is to be able to tell manufacturers to rethink their pricing policy*". In early January 2024, citing "*unacceptable price increases*", *Carrefour* went further than labelling *PepsiCo*'s examples of "*shrinkflation*" and started removing *PepsiCo*'s products from its shops in four countries, namely in Belgium, France, Italy, and Spain.

In Germany, the Federal Minister for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection *Steffi Lemke* announced her intention to take action against hidden price increases in retail trade, noting that "*Deceptive packaging is a major nuisance. Consumers are being misled here*". According to a statement by the Government of Hungary, food retailers with sales revenue of more than 1 billion Forint (EUR 2.64 million) would be obliged to display warnings on products that have been reduced in size, while their prices have been maintained or were increased.

**Outlook**

With respect to France's draft Order, starting from the date of notification of the draft Order, a three-month standstill period applies until 28 March 2024, during which France may not adopt the technical regulation in question, enabling the Commission and the other EU Member States to examine the notified text and to respond. The next steps taken in France, the EU, and its Member States on the matter of "*shrinkflation*" should be closely monitored and stakeholders should be prepared to participate in the debate by interacting with relevant EU Institutions, trade associations, and other affected stakeholders.

## Recently adopted EU legislation

### Trade Law

- *Council Decision (EU) 2023/2853 of 12 December 2023 on the signing, on behalf of the Union, of the Economic Partnership Agreement between the European Union, of the one part, and the Republic of Kenya, Member of the East African Community, of the other part*

- *Commission Implementing Regulation (EU) 2023/2882 of 18 December 2023 suspending commercial policy measures concerning certain products originating in the United States of America imposed by Implementing Regulations (EU) 2018/886 and (EU) 2020/502*

- *Council Decision (EU) 2023/2855 of 21 November 2023 authorising the opening of negotiations with the Republic of Colombia for a Partnership and Cooperation Agreement*

- *Commission Delegated Regulation (EU) 2023/2835 of 10 October 2023 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards rules on import in the sectors of rice, cereals, sugar and hops, and repealing Commission Regulations (EC) No 3330/94, (EC) No 2810/95, (EC) No 951/2006, (EC) No 972/2006, (EC) No 504/2007, (EC) No 1375/2007, (EC) No 402/2008, (EC) No 1295/2008, (EC) No 1312/2008 and (EU) No 642/2010, (EEC) No 1361/76, (EEC) No 1842/81, (EEC) No 3556/87, (EEC) No 3846/87, (EEC) No 815/89, (EC) No 765/2002, (EC) No 1993/2005, (EC) No 1670/2006, (EC) No 1731/2006, (EC) No 1741/2006, (EC) No 433/2007, (EC) No 1359/2007, (EC) No 1454/2007, (EC) No 508/2008, (EC) No 903/2008, (EC) No 147/2009, (EC) No 612/2009, (EU) No 817/2010, (EU) No 1178/2010, (EU) No 90/2011 and Commission Implementing Regulation (EU) No 1373/2013*

- *Commission Implementing Regulation (EU) 2023/2834 of 10 October 2023 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards imports in the sectors of rice, cereals, sugar and hops*

- *Commission Delegated Regulation (EU) 2023/2908 of 12 October 2023 amending Council Regulation (EC) No 32/2000 as regards the volumes of food preparations, processed shrimp of the species Pandalus borealis and certain plywood of coniferous species that may be imported under tariff quotas 09.0013, 09.0047, 09.0088 and 09.0096*

- *Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part*

- *Council Regulation (EU) 2023/2890 of 19 December 2023 amending Regulation (EU) 2021/2278 suspending the Common Customs Tariff duties referred to in Article 56(2), point (c), of Regulation (EU) No 952/2013 on certain agricultural and industrial products*

- *Council Regulation (EU) 2023/2880 of 19 December 2023 amending Regulation (EU) 2021/2283 opening and providing for the management of autonomous tariff quotas of the Union for certain agricultural and industrial products*

- *Council Decision (EU) 2023/2921 of 21 December 2023 establishing the position to be taken on behalf of the European Union within the Partnership Council established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, as regards the transitional product-specific rules for electric accumulators and electrified vehicles*

- *Decision No 1/2023 of the Partnership Council established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part of 21 December 2023 as regards the transitional product-specific rules of origin for electric accumulators and electrified vehicles [2023/2891]*

## Customs Law

- *The European Commission adopted the Implementing Decision (Annex) on the new Union Customs Code (UCC) Work Programme which replaces the one in force since 2019*

- *Council Decision (EU) 2023/2898 of 19 December 2023 on the position to be taken on behalf of the European Union within the World Customs Organization (WCO) with regard to the adoption of Explanatory Notes, Classification Opinions or other advice on the interpretation of the Harmonized System and recommendations to secure uniformity in the interpretation of the Harmonized System under the HS Convention*

- *Commission Implementing Decision (EU) 2023/2879 of 15 December 2023 establishing the Work Programme relating to the development and deployment for the electronic systems provided for in the Union Customs Code*

- *Commission Delegated Regulation (EU) 2024/197 of 19 October 2023 amending Regulation (EC) No 1272/2008 as regards the harmonised classification and labelling of certain substances*

## Trade Remedies

- *Commission Implementing Regulation (EU) 2024/209 of 10 January 2024 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of steel bulb flats originating in the People's Republic of China and Türkiye*

## Food Law

- *Commission Implementing Regulation (EU) 2023/2847 of 20 December 2023 authorising the placing on the market of apple fruit cell culture biomass as a novel food and amending Implementing Regulation (EU) 2017/2470*

- *Commission Implementing Regulation (EU) 2023/2851 of 20 December 2023 authorising the placing on the market of partially hydrolysed protein from spent barley (Hordeum vulgare) and rice (Oryza sativa) as a novel food and amending Implementing Regulation (EU) 2017/2470*

- *Commission Implementing Regulation (EU) 2023/2852 of 20 December 2023 correcting Implementing Regulation (EU) 2023/1581 amending Implementing Regulation (EU) 2017/2470 as regards the conditions of use of the novel food astaxanthin-rich oleoresin from Haematococcus pluvialis algae*

- *Commission Delegated Regulation (EU) 2023/2911 of 16 October 2023 correcting the Swedish language version of Delegated Regulation (EU) 2020/2146 supplementing Regulation (EU) 2018/848 of the European Parliament and of the Council as regards exceptional production rules in organic production*

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