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Not so *Single Market* – the EU Parliament calls for action against intra-EU non-tariff barriers

On 26 May 2016, the EU Parliament adopted a resolution calling on the European Commission (hereinafter, Commission) to take action against remaining non-tariff barriers (hereinafter, NTBs) on the EU Single Market. The resolution is based on a related report by the Committee on the Internal Market and Consumer Protection, published on 28 April 2016, and follows-up on the recently adopted Single Market Strategy put forth by the Commission. The key issue is the removal of non-tariff measures (hereinafter, NTMs) that may constitute NTBs, as much at the internal EU level as on the international level, where WTO agreements and preferential trade agreements (hereinafter, PTAs) are the main tools to tackle barriers to trade and investment.

As the report by the EU Parliament points out, tariff barriers in the EU were successfully abolished years ago. However, it is the continuing existence of NTBs that motivates the various recent Single Market initiatives. On a larger scale, and according to the report by the EU Parliament, this "*echoes the state of the art in international trade: where tariffs are more easily tackled, but the removal of non-tariff barriers (NTBs) stands as the ultimate prize*". This '*ultimate prize*' is not nearly as easily achieved, be it on the Single Market or in preferential trade agreements (see *Trade Perspectives*, Issue No. 10 of 20 May 2016 on the EU-Japan negotiations). The EU Parliament identifies almost 40 specific issues that obstruct the internal market and that should be dealt with, which pertain to issues related to the Single Market for goods, services and retail. This long list of issues is also just indicative in nature and is by no means exhaustive.

The report and the resolution are part of a greater undertaking and strategy with the objective of improving the conditions in the EU's Single Market. The Commission is already trying to improve the situation, working on various initiatives as part of the recently adopted Single Market Strategy (*i.e.*, *Upgrading the Single Market: more opportunities for people and business - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2015) 550 final*). The Commission's Single Market Strategy discusses, in detail, the shortcomings of the current situation and lists 22 initiatives that the Commission aims to take up between 2016 and 2017. However, while the EU Parliament highlights many of the same issues, the *Rapporteur* of the report, Member of the European Parliament (hereinafter, MEP) Daniel Dalton, identifies two horizontal challenges to overcome in order to improve the Single Market: on the one hand, MEP Dalton calls on all parties to realise a better and more

consistent enforcement of the already existing rules and on the other hand, MEP Dalton calls for a '*change in mind-set*' by EU Member States moving away from protectionist measures and to open their domestic markets more fully. This change in mind-set is also necessary for EU business operators and private citizens, who often still perceive '*their*' EU Member State as domestic and other EU Member States as '*international*'. Recent examples show the remaining barriers for business operators and private citizens alike. For example, only in 2017 will roaming fees be abolished and will people with an EU phone provider cease to be charged additional fees when crossing the mostly invisible borders within the EU. While borders have mostly become invisible, NTMs by EU Member States, which sometimes constitute NTBs, continue to segment the EU's Single Market along national borders.

A key issue identified by the EU Parliament is the handling by the EU Member States of EU directives. According to Article 288 of the Treaty of the Functioning of the European Union (TFEU), a directive shall be binding, as to the result to be achieved, upon each EU Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. This apparently simple legal instrument, giving EU Member States the power to choose form and methods of transposing the EU legal basis into domestic law, is responsible for a long list of problems. Problems include, most notably, the different speeds of transposition and '*asymmetrical*' implementation, leading to legal uncertainty and diverse competition conditions; a complete lack of (timely) implementation and the diverging application of specific directives; and finally, the loading of directives with additional rules during transposition, so-called '*gold plating*' (a recent example of such gold-plating are the additional rules that EU Member States are implementing when transposing the revised EU Tobacco Products Directive II, such as plain packaging). In addition to this, a high number of issues exist that obstruct internal trade, services and procurement in the EU. Many times, these issues remain unnoticed by the greater public and only become apparent for a small number of business operators. Tools exist to notify these issues (such as the national SOLVIT contact points in EU Member States, as well as in Iceland, Liechtenstein and Norway, established to tackle breaches of EU law by public authorities in another EU country), but they too are in need for improvement, as the EU Parliament points out in its resolution. Business operators, particularly small- and medium-sized enterprises (hereinafter, SMEs) may already be discouraged when facing such problems, and may not have the appetite to engage in protracted and costly interactions with the competent authorities at the domestic and EU level.

The EU has been at the forefront of identifying and combating NTMs and NTBs around the world, raising questions and concerns over domestic measures in international *fora*, such as the WTO, and highlighting the removal of NTBs in its PTA negotiations (see *Trade Perspectives*, Issue No. 10 of 20 May 2016 on the EU-Japan negotiations and *Trade Perspectives*, Issue No. 1 of 15 January 2016 on the EU-US TTIP negotiations). However, neglecting this issue internally is just as costly for businesses and consumers, and the removal of NTMs may yield highly significant economic dividends. According to the resolution by the EU Parliament, the actual completion of the Single Market would amount to economic gains between EUR 651 billion to EUR 1.1 trillion per year, or between 5% and 8.63% of the EU Gross Domestic Product (GDP). The toolbox for tackling NTBs on the Single Market and in international trade negotiations is mostly equivalent. They range from the self-evident issue of compliance with the law, harmonization of legislation, standards and rules, the mutual recognition of each other's methods, processes, conformity assessments and certifications and to, finally, deconstructing all boundaries by removing the differences or accepting the remaining differences as so negligible *vis-à-vis* the same regulatory objective that the systems are deemed equivalent.

The issue of mutual recognition was taken up by the Commission as one of the 22 initiatives of the Single Market Strategy. While the Mutual Recognition Regulation (*i.e.*, *Regulation (EC) No. 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down*

procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC) transferred the burden of proof that products are lawfully marketed elsewhere from the business operator to the domestic authorities, business operators remain confronted with barriers created by domestic law and domestic administrative practices. Therefore, the Commission is preparing an Action Plan to promote the principle of mutual recognition, highlighting measures for several specific sectors (*e.g.*, the construction sector) for which mutual recognition has particular relevance. A further initiative was made public shortly after the resolution of the EU Parliament. The Commission published its plan to modernise the EU's standardisation policy, highlighting the key function of standards in reducing costs, promoting innovation, ensuring interoperability between different devices and, most importantly for the Single Market, helping business operators access markets. A key focus will be the services sector, which accounts for 70% of the EU economy. However, service standards only account for 2% of all EU standards. At the same time, a Joint Initiative on Standardisation (hereinafter, JIS) was launched, bringing together EU and EU Member State standardisation organisations and bodies, industry, SMEs, consumer associations, trade unions, environmental organisations, EU Member States and the Commission in order to modernise, prioritise and speed up the timely delivery of standards. Additionally, the JIS is supposed to promote the use of EU standards at international level. This highlights, again, the international side of the issue and something that the EU is already emphasising in its approach for PTAs - by using them as a tool to set standards on a global level.

Improving the EU Single Market and tackling NTMs that may create significant, trade distorting and trade obstructing NTBs requires the participation of all involved stakeholders. It is the business sector, and in particular SMEs, that are most affected by barriers on the Single Market or by international barriers to trade, investment and procurement. However, at the same time, industry is in the best position to identify NTMs and NTBs, and to suggest improvements. Interested parties must be actively involved, and the various initiatives of the Single Market Strategy, as well as the various ongoing trade negotiations, provide good opportunities to shape the future EU and the global market.

The EU-New Zealand FTA: where things stand

The week of 31 May 2016 was '*OECD Week 2016*' (*i.e.*, a 4-day event where the Organisation for Economic Co-operation and Development hosts a yearly *Forum*, this time in Paris, France) where, in relevant part, reports indicate that the Honourable Todd McClay, New Zealand's Minister of Trade, took the opportunity to further advocate for the launch of negotiations on an EU-New Zealand Free Trade Agreement (hereinafter, FTA) with ministers from EU Member States. The EU-New Zealand FTA has enormous potential benefits for both parties, but for negotiations to be successful, both parties will need to make certain concessions, especially as they relate to agriculture.

Since 1999, the EU and New Zealand have made a number of relevant joint statements with respect to bilateral relations, including a '*Joint Declaration on Relations between New Zealand and the European Union*' in 1999, a joint statement in 2004 titled '*New Zealand and the European Union: priorities for future cooperation*' (known as the EU-New Zealand Action Plan) and a '*Joint Declaration on Relations and Cooperation*' in 2007. More recently, in October 2011, the EU and New Zealand advanced bilateral relations, but in the context of a '*Partnership Agreement on Relations and Cooperation*' (*i.e.*, PARC), where the EU and New Zealand acknowledged their common views in respect of international obstacles to trade. Formal negotiations for the PARC were launched in July 2012 and concluded on 30 July 2014. The PARC is a political framework agreement, which provides a comprehensive policy framework of the bilateral relations between the EU and New Zealand. Notably, the PARC contains some provisions on trade and investment, but they are of a non-preferential nature

and do not contain specific market access provisions such as the elimination or reduction of import tariffs or the removal on non-tariff barriers. Moreover, the *Joint Proposal for a Council Decision on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement on Relations and Cooperation between the European Union and its Member States, of the one part, and New Zealand of the other part* wasn't published until 14 April 2016, and the PARC does not yet appear to be signed. Although the desire for a comprehensive FTA has been strong for some time, at least from New Zealand, a joint statement in March 2014 set out a '*reflection process*', and another statement in October 2015 set out the process leading towards a high-quality free trade agreement. Reports indicate that Minister McClay believes that formal negotiations may not begin until early 2017.

The delay until 2017 for the launch of formal negotiations may be due to the internal process required in the EU. The process leading to the formal launch of trade negotiations in the EU first includes the opening of a public consultation on the contents and options for an FTA by the Commission. The Commission then completes an impact assessment of any such deal on the EU and the third-country in question. The Commission also partakes in a '*scoping exercise*', whereby it opens an informal dialogue with the country concerned on the content of any future negotiation. Lastly, the Commission must request formal authorisation from the Council of the EU to launch negotiations, known as '*negotiating directives*', which are also reviewed by Members of the European Parliament. After internal discussions, the Council of the EU adopts the negotiating directives and authorises the Commission to negotiate on behalf of the EU. In this respect, the Commission appears to have joined the potential EU-New Zealand FTA with the potential EU-Australia FTA. On 11 March 2016, the Commission opened online public consultations on the future of EU-Australia and EU-New Zealand trade and economic relations, which concluded on 3 June 2016. The Commission has also published an Inception Impact Assessment on the EU-Australia and EU-New Zealand FTAs. The preliminary assessment of the expected impacts outlined in said Inception Impact Assessment addresses impacts on the economy, social issues, the environment, simplification and/or administrative burdens, SMEs, competitiveness and innovation, public administrations and third countries' international trade or investment. The full impact of the EU-Australia and EU-New Zealand FTAs on these areas will be analysed fully in the final Impact Assessment published by the Commission. However, it is clear, both from statements by government representatives of the EU and New Zealand, and from language contained in the Inception Impact Assessment, that one area of sensitivity will be agriculture.

Indeed, while the goods exported from the EU in 2014 covered a broad range of sectors (*e.g.*, motor vehicles, medicaments, tractors and telephone equipment), almost 75% of New Zealand's exports to the EU are agricultural products (*e.g.*, sheep meat, dairy, beef and fruits and vegetables). The EU is particularly sensitive, and its relevant trade associations are generally opposed to increasing market access for imported agricultural products. With beef, for example, New Zealand may see an opportunity to liberalise the various tariff-rate quotas (hereinafter, TRQs) maintained by the EU, including the '*high quality beef*' quota, regulated by *Commission Implementing Regulation (EU) No. 481/2012 of June 2012 laying down rules for the management of a tariff quota for high-quality beef*. The '*high quality beef*' quota originated as a settlement to a dispute between the EU and Canada and the US, respectively, but New Zealand is one of the few countries (other than Canada and the US) that gained authorisation from the Commission to issue certificates of authenticity under said quota. However, following the entry into effect of the pending Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU, and the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US, it is expected that the EU will terminate the '*high quality beef*' quota (or at least its '*Most Favoured Nation*' (MFN) application). As such, it is important that New Zealand at least maintains its preferences with respect to '*high quality beef*' through an EU-New Zealand FTA. This may be difficult due to the strong influence of relevant trade associations in the EU.

Similar sensitivities apply with respect to the dairy sector in the EU. The dairy sector has been affected by recent legislation in the EU, namely the termination of the milk quota regime on 31 March 2015, which resulted in increased milk production in the EU and, as a consequence, lower prices and decreased revenues. There are some indications that the EU dairy industry is concerned that potential reductions on tariff duties for milk under an EU-New Zealand FTA would compound the issues faced by the EU dairy industry regarding prices and revenues, due to further increases on the supply side. Sources indicate that representatives of New Zealand have contended that, due to costs of storage and transportation, it is only practical for New Zealand to export powdered milk products to the EU, the prices of which are set by the world market. Representatives of New Zealand also reportedly contend that the EU and New Zealand could work together under an EU-New Zealand FTA, whereby dairy products are produced in New Zealand, exported, and then processed in the EU, and *vice versa*. In any event, it is clear that the dairy sector is one in which significant discussions would be necessary before negotiators from both parties could come to any agreement under a potential EU-New Zealand FTA.

On the other side, the EU may take issue with certain export restrictions present in New Zealand, in particular with respect to kiwifruit. Recent comprehensive trade and investment agreements negotiated by the EU include chapters addressing anti-competitive practices, as well as State trading enterprises, monopolies and enterprises granted special rights. In New Zealand, *Zespri Group Limited* (hereinafter, *Zespri*) is a company that, under New Zealand's *Kiwifruit Industry Restructuring Act of 1999*, was converted from the *New Zealand Kiwifruit Marketing Board*. The *New Zealand Kiwifruit Marketing Board* itself was established in 1988 '*to organise and control, for the benefit of growers, the marketing of all kiwifruit intended for export other than to Australia*'. The *Kiwifruit Industry Restructuring Act of 1999* granted *Zespri* a special and exclusive export authority to export kiwifruit to all foreign markets other than Australia. In particular, New Zealand expressly prohibits any operator other than *Zespri* from exporting kiwifruit to markets other than Australia, except where authorised by Kiwifruit New Zealand, a dedicated (and Government controlled) regulatory board. New Zealand notified the WTO of *Zespri*'s export authority as a State Trading Enterprise, stating that its objective was to '*obtain the best commercial return from world markets for producers in New Zealand*'. Exports of kiwifruit outside of *Zespri*'s export authority, where destined to markets other than Australia, are only allowed through collaborative marketing arrangements with *Zespri*. However, according to Kiwifruit New Zealand's 2014/15 annual report, only 1.64% of the kiwifruit exported from New Zealand was done *via* such collaborate marketing arrangements.

The operation of *Zespri*, and the export licensing system applied to kiwifruit in New Zealand, may actually violate New Zealand's WTO obligations, although it has yet to be challenged. A number of complaints could arguably be raised with respect to the WTO Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures (with respect to research and development support), as well as the WTO Agreement on Trade-Related Aspects of Intellectual Property (with respect to plant varieties and restrictions on the trademarks), but, arguably, the most apparent potential violations relate to Article XI:1 of the General Agreement on Tariffs and Trade 1994 (hereinafter, GATT). Article XI:1 of the GATT provides that '*[n]o prohibitions or restrictions other than duties, taxes or other charges, whether made effective through [...] export licences or other measures, shall be instituted or maintained by any contracting party [...] on the exportation or sale for export of any product destined for the territory of any other contracting party*'. Moreover, an Interpretative Note clarifies that '*[t]hroughout Article XI [...] the terms "*import restrictions*" or "*export restrictions*" include restrictions made effective through state-trading operations*'. Accordingly, a claim under Article XI:1 of the GATT requires three conditions to be met: (1) the existence of a '*measure*' within the meaning of Article XI:1 of the GATT; (2) adopted or maintained by a government; (3) which restricts, *de jure* or *de facto* (imports or) exports. Under the export

licensing system in place in New Zealand, its objective is to affect market prices for kiwifruit, and it, at the very least, *de facto* restricts exports of kiwifruit from New Zealand.

Although kiwifruit production is arguably most associated with New Zealand throughout the world (its citizens are even affectionately referred to as '*kiwis*'), New Zealand is actually the world's third largest producer of kiwifruit, behind China and Italy. In the EU, in addition to Italy, France and Greece are also major producers of kiwifruit. Due to the locations of the various countries, *Zespri* actually contracts with producers in countries in the northern hemisphere, so that '*Zespri*' kiwifruit is still on the world market outside of the growing season in New Zealand. Reportedly, the practices of *Zespri* are such that in several markets there are also serious allegations of anti-competitive behaviour. As such, it will be interesting to follow whether the EU-New Zealand FTA negotiations will tackle *Zespri*'s market monopoly and the effect of its practices on the EU market (and beyond). This appears to be a key interest for the EU's kiwifruit industry and is also a systemic objective for the EU to address. To do so, the EU may need to give concessions in other agricultural areas or in other commercial sectors. Interested stakeholders should monitor developments, and begin reaching out to relevant government officials in order to ensure that their interests are adequately represented during the upcoming negotiations. This is a unique opportunity.

The new US '*Nutrition Facts*' require food and business operators to indicate how much sugar has been added to their products

The US Food and Drug Administration (hereinafter, FDA) is amending the labelling regulations for conventional foods and dietary supplements to provide updated nutrition information on the label with the aim of assisting consumers in maintaining healthy dietary practices. The amendment modernises the nutrition information found on the so-called '*Nutrition Facts*' label, as well as the format and appearance of the label. On 20 May 2016, the FDA announced the final regulations for nutrition labelling and serving sizes, which were published in the Federal Register on 27 May 2016. Food business operators (hereinafter, FBOs) will have to comply with the new rules on 26 July 2018 (or on 26 July 2019 for FBOs with less than USD 10 million in annual food sales). The new rules amend 21 C.F.R. (Code of Federal Regulations) § 101 on food labelling under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, in particular § 101.9 thereof on nutrition labelling of food.

Among the many changes of the '*Nutrition Facts*' label, which include larger font for the number of calories and servings per container, is a new line of text located just underneath '*total sugars*'. In this new line of text, FBOs are required to indicate exactly how much of the total sugars include '*added sugars*', and what percentage of the daily value is represented by those added sugars. The word '*includes*' is intended to clarify that added sugars are a sub-component of total sugars. The final regulation requires declaration of added sugars in grams (*i.e.*, '*includes x g of added sugars*') and declaration of a percent of Daily Value (hereinafter, %DV) for added sugars (however, not for total sugars). A footnote is intended to better explain what %DV means. It reads: "*The %DV tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice*".

EU law, as well as, at the international level, the *Codex Alimentarius,* refer to '*total sugars*', without a subcategory of '*added sugars*'. In the EU, the nutrition labelling provisions in *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* (hereinafter, FIR) harmonise nutritional information on energy and on certain nutrients on food. Nutrition labelling was optional under the FIR's predecessor, *Council Directive 90/496/EEC of 24 September 1990 on nutrition labelling for foodstuffs*, and was only compulsory in two cases: 1) where a nutrition claim appeared on labelling, in presentation or in advertising; or 2) on fortified foods

to which vitamins and minerals have been added. With a few exceptions, nutrition labelling is becoming mandatory for all foodstuffs as of 14 December 2016. FBOs can introduce nutrition labels on their products earlier than 14 December 2016, but must then comply with all of the requirements and format of the FIR.

Article 30 of the FIR provides that the mandatory nutrition declaration must include the following: (a) energy value; and (b) the amounts of fat, saturates, carbohydrate, sugars, protein and salt. The content of the mandatory nutrition declaration may be supplemented by an indication of the amounts of one or more of the following: (a) mono-unsaturates; (b) polyunsaturates; (c) polyols; (d) starch; (e) fibre; and (f) any of certain vitamins or minerals and present in significant amounts. Annex I of the FIR defines '*sugars*' as all monosaccharides and disaccharides present in food, but excludes polyols. Annex XV of the FIR details how nutrition information must be provided. Sugars, polyols and starch have to be listed under the category '*carbohydrate*' preceded by the words '*of which*'.

In that context, the Commission's Question and Answer guidance document of 31 January 2013 on the FIR answers question 3.13 as to whether it is possible to label the content of components of voluntary nutrients (*e.g.*, '*omega 3 fatty acids*') as components of polyunsaturates with a categorical "*No. The nutrition declaration is a closed list of energy value and nutrients and cannot be supplemented by any further nutrition information*", except when a nutrition or a health claim has been made for a nutrient or other substance and must also be declared, whereby there are different interpretations as to whether it can be part of the nutrition declaration itself (in an extra text line under '*fat*') or must be indicated close-by, in the same field of vision.

At the international level, Article 2.4 of the WTO Agreement on Technical Barriers to Trade (TBT Agreement) provides that technical regulations must be based on the relevant international standards. The relevant measure is the *Codex* Guidelines on Nutrition Labelling (CAC/GL2-1985, revised in 2013), which defines sugars in point 2.7 as "*all mono-saccharides and di-saccharides present in food*". Most importantly, point 3.2 provides that "*where nutrient declaration is applied, the declaration of the following is mandatory: energy value; and the amounts of protein, available carbohydrate (i.e. dietary carbohydrate excluding dietary fibre), fat, saturated fat, sodium (or salt) and total sugars; and the amount of any other nutrient for which a nutrition or health claim is made*". Therefore, reference is made to '*total sugars*' without an eventual '*added sugars*' sub-category.

Of interest is also point 3.2.1.4 of the *Codex* Guidelines on Nutrition Labelling, which states that the amount of any other nutrient considered to be relevant for maintaining a good nutritional status may be indicated, as required by national legislation or national dietary guidelines. A footnote to this provision gives as an example the circumstance that countries, where the level of intake of trans-fatty acids (hereinafter, TFAs) is a public health concern, may consider the declaration of trans-fatty acids in the nutrition labelling. The US has required the indication of TFAs in the past and continues requiring it in the new '*Nutrition Facts*' label (regarding the status of TFAs in the US, see *Trade Perspectives*, Issue No. 23 of 18 December 2015). A question is whether '*added sugars*' are another example of public health concerns that justifies its entry in the '*Nutrition facts*' label. Arguably, added sugars are not a chemically different nutrient from sugars, whereby TFAs are a particular type of unsaturated fatty acids.

Discussions on the new US '*Nutrition Facts*' have also taken place at international level. On 10 March 2014, the US notified the revision of the Nutrition Facts Labels to the WTO Committee on Technical Barriers to Trade (TBT). The EU commented in detail and stated that, regarding the mandatory labelling of the added sugars content, this would lead to the mandatory labelling of the added sugars content, on top of the total sugars content. The EU considered that the lack of an analytical method to distinguish naturally present and added

sugar is a serious obstacle that would lead to difficult compliance assessments and that the determination of added sugars is only feasible by using recipe and process information. The EU also expressed concerns on the changes to the sugars content that can occur during food processing, where the US authorities only provided an example of processes that lead to reduction of sugars content, like the *Maillard* reaction and fermentation. However, sugars content can also be increased by hydrolysis and enzymatic reactions using ingredients containing carbohydrates. In this respect, the EU asked the US authorities what the classification of the sugars would be (natural or added sugars) produced by such reactions during the food processing. According to the EU, the possibility to have *in situ* produced sugars shows the difficulty of drawing a clear line between the two types of sugars. The EU also expressed its concerns about the consumer understanding of the information on sugars, which would become more complex. As there is no difference in the health impact of either types of sugars, a focus on added sugars risks distracting consumers from the impact of total sugars intake on their diet. Consumers may understand that an excessive intake of natural sugars is less harmful than an excessive intake of added sugars, while the two would have the same health impact. The EU argued that the information on total sugars is sufficient for informing consumers about the sugars content of foods. Consumers would be sufficiently informed about the sugars content of products such as soft drinks with the information on the amount of total sugars and the energy value. Considering the difficulties of enforcement, the lack of scientific basis to distinguish between the types of sugars as far as health impact is concerned, and the more complex message for consumers, the EU invited the US authorities to reconsider their position regarding the introduction of mandatory added sugars labelling, which the US has so far not done.

At the time of publishing the new legislation on nutrition labelling, the FDA recognised that what constitutes added sugars and how this might affect labelling of certain products has generated a lot of debate, *inter alia*, the question of whether juice from concentrate would need to label all sugars as added sugars). The FDA clarified its intent in the final regulation: sugars from fruit or vegetable juice concentrates are '*added sugars*' only to the extent that they add sugars in excess of what would be expected from the same volume of 100% fruit or vegetable juice of the same type. Recognising that there is no nutritional difference between sugars in 100% juice prepared from concentrate and in 100% juice not from concentrate, the final regulation specifies that fruit or vegetable juice concentrates used towards the total juice percentage label declaration or for Brix standardisation are not considered '*added sugars*' for purpose of the nutrition labelling. Similarly, neither fruit juice concentrates, which are used to formulate the fruit component of jellies, jams, or preserves in accordance with the standards of identity, nor the fruit component of fruit spreads, are '*added sugars*' for purposes of nutrition labelling.

Arguably, the new US '*Nutrition Facts*' requiring the indication of '*added sugars*' constitute a barrier to trade that is not based on the relevant international *Codex* standard. EU's FBOs will need to change their labels in order to access the US market. This will increase the difficultly of trade between the EU (and other third countries) and the US. It is evident that careful analysis of the US market will be required from FBOs to determine whether and how added sugars must be declared, and in what amount. Furthermore, careful record keeping is needed. On the other hand, discussions on requiring the indication of '*added sugars*' may start in the EU after the US's move, even before the new EU nutrition labelling rules come into effect in December 2016, after a long and difficult legislative process. Developments in that regard need to be carefully monitored by stakeholders so as to have arguments ready, should mere discussions materialise into actual legislative proposals in the EU on nutrition labels including added sugars. Stakeholders should be prepared to interact with relevant EU Institutions, trade associations and other affected stakeholders.

Recently Adopted EU Legislation

Trade Remedies

- *Commission Implementing Regulation (EU) 2016/865 of 31 May 2016 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Implementing Regulation (EU) 2015/2384 on imports of certain aluminium foil originating in the People's Republic of China by imports of slightly modified certain aluminium foil from the People's Republic of China, and making such imports subject to registration*

Food and Agricultural Law

- *Regulation (EU) 2016/791 of the European Parliament and of the Council of 11 May 2016 amending Regulations (EU) No. 1308/2013 and (EU) No. 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments*

Other

- *Regulation (EU) 2016/793 of the European Parliament and of the Council of 11 May 2016 to avoid trade diversion into the European Union of certain key medicines*

- *Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels*

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