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Towards the conclusion of the Environmental Goods Agreement

During the week of 17 October 2016, delegates from 17 WTO Members, including the EU, met in Geneva for the 17th round of negotiations of the Environmental Goods Agreement (hereinafter, EGA). On 21-22 October 2016, a '*mini-ministerial*' meeting was held in Oslo, Norway, to discuss the most sensitive items of the EGA. During 2016, negotiations of the EGA have progressed positively towards the potential conclusion of an '*ambitious and future-oriented*' agreement by the end of the year. However, certain issues still need to be addressed and resolved by the EGA negotiating Parties.

The EGA is a plurilateral agreement that aims at removing barriers to trade in environmental goods within a broader effort to protect the environment and mitigate climate change. In the long term, the EGA is envisaged as a '*living agreement*' that will expand to add new products in response to technological advances and eventually address environmental services and non-tariff barriers (hereinafter, NTBs) to trade. Currently, the EGA relates only to environmental goods. The EGA was originally launched by 14 WTO Members (*i.e.*, Australia, Canada, China, Costa Rica, the EU, Hong Kong, Japan, Korea, New Zealand, Norway, Singapore, Switzerland, Chinese Taipei and the US) in July 2014. Three additional WTO Members (*i.e.*, Israel, Iceland and Turkey) later joined the negotiations. Australia currently chairs the negotiations. The EGA negotiating Parties set out to build on a list of 54 environmental goods for which the Member Economies of the Asia-Pacific Economic Cooperation (APEC) had committed to reduce import tariffs in 2012.

Over the course of numerous negotiating rounds, the EGA negotiating Parties established and reviewed environmental goods categories (*i.e.*, air pollution control, cleaner and renewable energy, energy efficiency, environmental monitoring analysis and assessment, environmental remediation and clean-up, environmentally preferable products, noise and vibration abatement, resource efficiency, solid and hazardous waste management, and wastewater management and water treatment). Until now, the EGA negotiating Parties have nominated some 650 tariff classifications covering more than 2,000 products related to various environmental activities for inclusion in the deal. These were pared down to an estimated 300 tariff classifications (divided into chapters (2 digits), headings (4 digits), or subheadings (6 digits), or a combination of the three) and related ex-outs (*i.e.*, a subset of products to be covered by the tariff classification) on a draft product list prepared in August 2016. The EGA will be extended on a '*Most Favoured Nation*' basis to all WTO Members once WTO Members in the EGA represent a critical mass of global trade in environmental goods (*i.e.*, approximately 90% of trade of the relevant products). It means that the eliminated tariffs agreed by the EGA negotiating Parties would apply to all WTO Members and not just to those having negotiated the EGA. This initiative is an important step to increase the use of certain technologies, including for climate change mitigation, by eliminating custom duties on environmental goods.

Since July 2016, the EGA negotiating Parties have had productive and detailed discussions on the draft legal text of the EGA. They continued to discuss the list of potential products covered by the Agreement, the schedule for its implementation, the periodic revision mechanism, the potential future participation of other WTO Members in the EGA, the institutional arrangements, as well as a possible future work programme on services and NTB issues. There is a growing convergence on a core set of provisions in the draft text of the EGA. However, some controversies remain: the inclusion of certain products (*e.g.*, wood products and bicycles) in the EGA, the conclusion of the agreement with appropriate modalities and institutional arrangements, as well as the determination of the level of '*critical mass*' participation for the deal to enter into force.

During the 17th round of negotiations of the EGA, the negotiating Parties adopted a different approach. They gathered in small group meetings and focused on sensitive product categories. The views of the proponents and opponents of selected products allowed the EGA negotiating Parties to suggest compromises. For instance, they proposed to include more products under certain tariff classifications and to be more accurate on the descriptions of the ex-outs. The idea is that tariffs are eliminated over a longer period of time for commercially sensitive products than for other products. Several EGA negotiating Parties stand ready to include specific products in the EGA if a balance of their interests is met in the final deal.

According to MEPs of the Group of the Progressive Alliance of Socialists and Democrats in the European Parliament, a number of risks are associated to the EGA. Firstly, the EGA does not provide a definition of the concept of '*environmental good*'. Secondly, the EGA negotiating Parties take into consideration only the environmental effects that a final product may have on the environment, while the production process of a product could be very detrimental to the environment. Thirdly, both services and NTBs are currently excluded from the negotiations and the scope of the EGA. This could create an unbalanced business situation where EU industries may face certain types of obstacles, when trying to enter into some foreign markets, that would not be experienced by foreign investors coming into the EU market.

In March 2016, the European Commission (hereinafter, the Commission) released a Trade Sustainability Impact Assessment on the EGA. On the one hand, the Commission assessed how the elimination of tariffs in environmental goods, as well as the potential liberalisation of related services under the proposed agreement, will impact a range of environmental, economic and social factors. On the other hand, the Commission conducted a thorough consultation process with a diverse range of relevant stakeholders in order to receive feedback on the potential impacts of the EGA. The study highlighted several positive points. The liberalisation of trade and the resulting growth in trade of environmental goods would contribute to improved economic opportunities by attracting imports and boosting exports. Moreover, the lowering of trade barriers could lead to countries having the opportunity to enter and move up global value chains. The study further pointed out indirect opportunities. The EGA Parties pursuing greening energy policies would benefit from improved uptake of relevant technologies. They may also see positive social impacts at the local level with increased opportunities for employment. Similarly, there would be reduced costs and increased economic efficiencies for local businesses through increased adoption of energy efficiency technologies. Nonetheless, the study recalled that there are still remaining challenges. Given the complex and highly interrelated nature of trade flows, impacts would not be consistent for all EGA Parties and, as with any changes in trade flows, some groups may face new challenges in the short term. In addition, there would be potential losses of import tax revenue.

The conclusion of the EGA talks is foreseen by the end of 2016 after the 18th EGA round from 27 November to 1 December 2016, at the EGA ministerial level meeting on 3-4 December 2016. Interested stakeholders should use these final weeks before the likely conclusion of the negotiations to express their views to the EGA negotiating Parties. In order to maximise the economic and commercial effects from the EGA, a particular focus should be placed on achieving full tariff elimination of environmental goods. An effective permanent negotiation mechanism will need to be established to implement the '*living agreement*' and a

roadmap should be established for the future development of the EGA. It will still be necessary to tackle the NTBs that are detrimental to trade in environmental goods, while maintaining high environmental standards that encourage the development of sustainable technologies, as well as harmonising international environmental standards. Extended phase-in periods for tariff reduction may be necessary for developing countries, in order to encourage domestic competition and support domestic companies in adapting to tariff reductions. Finally, it will be essential to establish a cooperation mechanism with the World Customs Organization (WCO) to ensure that future iterations of the HS nomenclature better reflect emerging and future environmental items.

Further steps to regulate '*trans fats*' in foods in the EU

On 26 October 2016, the European Parliament adopted, with a large majority, a resolution calling for a limit on industrially produced *trans* fats in foods in the EU. The European Commission (hereinafter, the Commission) is currently preparing the launch of an impact assessment for measures to be considered with respect to *trans* fats, and on 11 October 2016 it published its Inception Impact Assessment. Amidst calls to speed up this process, viable and important alternatives to *trans* fats, in particular, naturally stable fats such as palm oil, are subjected to continuous negative and, arguably, illegal, campaigns by public and private entities.

Trans fats or, more correctly, *trans* fatty acids (hereinafter, TFAs) are specific types of unsaturated fatty acids. TFAs are naturally present in food products derived from ruminant animals, such as dairy products or meat from cattle, sheep or goat, as well as in some plants and products of vegetable origin (*i.e.*, leeks, peas, lettuces and rapeseed oil). *Trans* fats are also present in fats that have been industrially processed to artificially solidify them through hydrogenation (*i.e.*, to treat with hydrogen). Industrially produced TFAs can only be obtained through the process of partial hydrogenation. Partial hydrogenation of vegetable oils has an impact on the physiochemical and functional properties of the unsaturated fatty acids, thereby leading to a high content of TFAs (depending on the type of fat and method). Conversely, the process of complete hydrogenation (which is more costly), does not lead to TFAs. The majority of TFAs can be found in processed food products, such as ready meals, biscuits, potato chips, ready-made sauces or margarines, but also in take-away food.

The Resolution adopted by the European Parliament states that the frequent consumption of industrially produced TFAs "*has been associated with an increased risk of cardiovascular disease (more than any other long-term factor), infertility, endometriosis, gallstones, Alzheimer's disease, diabetes, obesity and some cancers*". According to the European Society of Cardiology (ESC), TFAs contribute to the risk of developing coronary heart diseases. The World Health Organization (hereinafter, WHO) indicates that the naturally occurring TFAs are unlikely to pose a risk to health in current real-world diets due to the comparatively low intake. At the same time, the proportion of industrially produced TFAs can be more easily modified and, therefore, most initiatives are geared towards the regulation of industrially produced TFAs. A 2010 report by the European Food Safety Authority (EFSA) concluded that TFA intakes should be "*as low as possible*" and the WHO has suggested that TFA consumption be limited at 1% of the total energetic intake, which has been interpreted by several countries as a limit of 2g of TFAs per 100g of fat.

Considering the associated effects and such recommendations, a number of countries have already taken action and introduced a variety of measures. A number of EU Member States have already introduced or announced legislation limiting the TFA content in food products, including Denmark (2003), Austria (2009), Hungary (2013) and Latvia (2015). Voluntary measures aimed at reducing TFA content exist in Belgium, Germany, the Netherlands, Poland, the UK and Greece. National dietary recommendations on TFAs were issued in Bulgaria, Malta, Slovakia, the UK and Finland. Spain, Greece and Finland introduced other legislative measures, such as limits on TFA content for specific products only. Outside the EU, a large number of countries has also introduced legislation limiting the TFA content. Most notably, in the US, the Food and Drug Administration (FDA) determined in 2015 that partially hydrogenated oils, the primary dietary source of industrially produced *trans* fats in

processed foods, cannot be considered as '*generally recognised as safe*' (*i.e.*, GRAS) and will, therefore, be prohibited from June 2018. The long transition period from 2015 to 2018 is intended to allow food manufacturers to adjust their processing accordingly. Limiting TFA content in food products appears to be working. In particular, there appears to be evidence that the Danish limits have nearly eliminated industrially produced TFAs from the Danish food market and, more importantly, appear to have already reduced the number of deaths caused by cardiovascular disease.

Thus, a multitude of approaches is possible with respect to regulating TFAs in foods in the EU. In fact, in 2015, four options were raised and evaluated by the European Consumer Organisation (BEUC) in an open letter to the Commission (see *Trade Perspectives*, Issue No. 10 of 15 May 2015). Those options were assessed by the Report from the Commission to the European Parliament and the Council regarding trans fats in foods and in the overall diet of the Union population (hereinafter, the Report) published on 3 December 2015. This report was mandated by Article 30(7) of *Regulation (EU) No. 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers* (hereinafter, FIR), stating that the Commission submit a report on "*the presence of trans fats in foods and in the overall diet of the Union population. The aim of the report shall be to assess the impact of appropriate means that could enable consumers to make healthier food and overall dietary choices or that could promote the provision of healthier food options to consumers, including, among others, the provision of information on trans fats to consumers or restrictions on their use. The Commission shall accompany this report with a legislative proposal, if appropriate*".

Currently, EU legislation, in its rules on nutrition labelling laid down in the FIR, puts an emphasis on saturated fatty acids. Article 30 of the FIR, which establishes the mandatory content of the nutrition labelling declaration as of 13 December 2016, requires that nutrition labelling declarations include: (a) energy value; and (b) the amounts of fat, saturates, carbohydrate, sugars, protein and salt. No indication of TFAs is required. Also, EU legislation does not require a specific reference to TFAs in the list of ingredients, neither does it regulate the content of TFAs in foodstuffs. The FIR requires, in No. 8 of Part A of Annex VII, that the expression "*fully hydrogenated*" or "*partly hydrogenated*", accompany the indication of hydrogenated fats and oils in the lists of ingredients. Therefore, a knowledgeable consumer can already identify whether a product contains TFAs. Furthermore, Annex 1 of *Regulation (EC) No. 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods* (hereinafter, NHCR) provides claims for products that are "*Low-saturated fat*" and for those that are "*Saturated fat-free*". The respective requirements refer to the amount of saturated fatty acids in the respective product.

The Report details and evaluates five possible options to reduce TFA consumption in the EU: (1) the introduction of a mandatory TFA content declaration in the EU; (2) an EU legal limit on the TFA content of food; (3) voluntary agreements towards reducing TFA in foods and diets at EU level; (4) an EU guidance for national legal limits on the TFA content of food; or (5) the action could be left at the national level and/or to voluntary reduction efforts. According to the Report, leaving this issue to the EU Member States would not ensure that all EU citizens benefit from the reduction and would continue the current piecemeal approach, negatively affecting the internal market. The Report then evaluates in more detail two main approaches: setting a limit on TFAs in food products and mandatory labelling of TFA content. With respect to mandatory labelling, the Report takes a clearly negative approach, basically listing the reasons for the ineffectiveness of such a solution. In particular, the Report notes that, due to limited consumer awareness, labelling as such might only have a limited impact. Also, such labelling scheme would be inappropriate for non-packaged foods. In case the label did not distinguish between naturally occurring and industrially produced TFA, consumers might be prompted to reduce their dairy and vegetable consumption, which would not be beneficial to the overall diet. Finally, the issue of limits would continue to be left to EU Member States' actions and prolong the patchwork of initiatives and applicable rules within the internal market. The introduction of an EU legal limit is the clear preference indicated in the Report. It is expected to achieve the greatest reductions in industrial TFA intake, particularly because it would apply to both packaged and non-packaged foods. At the same time, this solution would reduce or eliminate the fragmentation of the EU's single market.

The Report does note that, before introducing such measure, the Commission should take account of the potential impacts *vis-à-vis* consumers, producers and suppliers of the respective food products. Indeed, following the Report, on 11 October 2016, the Commission published the Inception Impact Assessment on the "*Initiative to limit industrial trans fats in the EU*". This assessment notes a "*Commission Regulation*" as the likely type of legislative initiative and refers to an indicative planning timeframe of the third quarter of 2017. The impact assessment, generally carried out by a contractor for the Commission, will include an open public consultation and a targeted consultation by the contractor. Apart from the impact assessment, the Commission should carry out a thorough and critical legal review of its envisaged measures, to ensure that they are in compliance with its obligations, including those stemming from the World Trade Organization (hereinafter, WTO). In particular, the EU would need to ensure that any measure is consistent with the requirements of the General Agreement on Tariffs and Trade (*i.e.*, the GATT), the Agreement on Technical Barriers to Trade (TBT) and the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement). A clear scientific basis and relevance *vis-à-vis* the protection of human health are important aspects to determine the WTO-compatibility of such measures.

While the EU is still debating measures against *trans* fats, more obvious (industrial and nutritional) solutions are also available, but often subject to negative campaigns. The EU Commissioner for Health and Food Safety stated that, in preparation of future regulatory steps, the Commission is also assessing whether measures regulating *trans* fats could prompt manufacturers to use alternatives that are less environmentally sustainable. This comment may be read in connection with the alleged sustainability concerns with respect to one of the key natural alternatives to hydrogenated oils: palm oil. Such concerns related to palm oil's sustainability are mostly unfounded, in particular taking into account the efforts by the palm oil industry to make palm oil production more sustainable and the large increase of sustainable palm oil now being produced and used by food manufacturers. Sustainable palm oil can be deemed as the primary alternative to partially hydrogenated fats and oils in food products. It is a natural, sustainable and healthy alternative, which is already available on the market. Palm oil is a vegetable oil that is solid at room temperature and does not need to be artificially hardened. Palm oil is a balanced oil that contains equal amounts of saturated and unsaturated acids.

Therefore, instead of illegally or deceivingly targeting palm oil as a whole, policymakers, companies and civil society organisations should be aware of and promote sustainable palm oil as a key alternative to vegetable oils and fats containing *trans* fats. Alternatives exist and they should be used. The recently adopted resolution by the European Parliament is, as such, not legally binding, but such resolutions can be seen as a political signal to the Commission, improving public visibility and awareness for certain issues. Following the conclusion of the impact assessment in 2017, the Commission will likely present its draft regulation introducing limits on industrial *trans* fats in foods during the course of 2017. Interested stakeholders, food manufacturers and suppliers of key alternatives, such as palm oil, should closely follow these developments in the EU and beyond. Regulatory measures with respect to *trans* fats look poised to significantly affect the demand for certain vegetable oils on the world market.

The return of the bitter-sweet EU chocolate controversy?

On 26 October 2016, the European Commission (hereinafter, Commission) answered questions submitted by a Member of the European Parliament (hereinafter, MEP) on 31 August 2016 related to EU law on vegetable fats other than cocoa butter or fat in chocolate. The debate about this issue had calmed down since the European Parliament and the Council adopted, on 23 June 2000, *Directive 2000/36/EC relating to cocoa and chocolate products intended for human consumption,* which allows the use of a limited number of vegetable fats other than cocoa butter for the manufacture of chocolate products. Re-opening the debate could lead to new discussions on consumer preferences in the EU.

A French MEP raising this issue *vis-à-vis* the Commission noted that various products labelled as '*chocolate*' co-exist on the EU's internal market, but that not all of them meet the same standards for levels of the constituent ingredients. According to this MEP, artisan chocolatiers see EU law on chocolate, permitting vegetable fats other than cocoa butter in chocolate, as a "*situation potentially threatening the future of their craft*". In his first question, the MEP asks whether the Commission can explain the rules on the minimum cocoa content and the maximum permissible volume of vegetable fats in chocolate. The second question is whether the Commission has, since the introduction of the minimum content levels, conducted any assessment of trends in terms of competition between artisan chocolatiers (which are micro-enterprises) and the large chocolate manufacturers. The third question states that, if the answer to the second question is in the negative, whether the Commission intends to do so, with a view to assessing the implications for employment and the retention of the craft's skills at the regional level.

The answer to the first question has been passionately debated at the EU level for over 40 years. In its answer, the Commission refers to Directive 2000/36/EC, which allows the use of a limited number of vegetable fats other than cocoa butter for the manufacture of the chocolate products defined in the Directive. Those vegetable fats are listed in Annex II to the same Directive (*i.e.*, palm oil, Illipe, sal, shea, kokum gurgi and mango kernel). However, the amount of vegetable fats other than cocoa butter may not exceed 5% of the finished product and the minimum content of cocoa butter, as established in the definitions of the different chocolate products, must be present in the final product. Moreover, the use of vegetable fats other than cocoa butter must be indicated on the label by the phrase "*contains vegetable fats in addition to cocoa butter*".

In response to questions two and three, the Commission states that cocoa, cocoa butter and other vegetable fats used for the manufacture of chocolate products are mainly produced in developing countries. As required by Directive 2000/36/EC, the Commission carried out a study on the possible impact of that Directive on the economies of the countries producing cocoa, cocoa butter and other vegetable fats, with a view to a possible amendment of the list of vegetable fats other than cocoa butter. This study, completed in 2006, suggested that the Directive has had very little impact on the global cocoa market as very few manufacturers in EU Member States have incorporated vegetable fats other than cocoa butter into their recipes. In its response, the Commission does not really address the conditions of competition between small artisan chocolatiers and large chocolate manufacturers as a consequence of the adoption of Directive 2000/36/EC, as requested by the MEP.

The chocolate dispute has divided the EU since 1973, when the UK, along with Ireland and Denmark, joined the EU and gained an '*opt out*' from EU law, which provided that only cocoa butter could be used in chocolate. *Council Directive 73/241/EEC on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption* permitted EU Member States' laws to maintain authorisations or prohibitions for the addition of vegetable fats other than cocoa butter to chocolate products for a limited period of time, when the Council shall decide, on a proposal from the Commission, on the possibilities and the forms of extending the use of these fats to the whole of the EU. Chocolate products containing fats other than cocoa butter, which were manufactured, *inter alia*, in the UK, were not allowed to freely circulate in the EU. In light of the establishment of the Single European Market in 1992, new attempts to revise Directive 73/241/EEC were made.

Prior to the adoption of Directive 2000/36/EC and its transposition in EU Member States' domestic legal systems until 2003, vegetable fats other than cocoa butter were allowed in chocolate in seven EU Member States. In addition to Denmark, Ireland and the UK, other vegetable oils were permitted in Austria, Finland and Sweden (all joining the EU in 1995), and in Portugal, which became an EU Member State in 1986. In Ireland and the UK, different recipes for chocolate than those used in continental Europe have been used for a long time. In those countries, chocolate manufacturers use less cocoa solids and often substitute vegetable oils for some of the cocoa butter. Chocolate bars are generally lighter and creamier than typical '*continental*' chocolate. Eight of the 15 EU Member States in 2000

prohibited the use of vegetable fats in chocolate, namely Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, and Spain.

The revision of Council Directive 73/241/EEC provoked various debates among EU Member States, chocolate producers, cocoa exporting countries, and other interest groups defending developing countries, or advocating for consumers' rights. The so-called chocolate '*purists*', led by Belgium and France, have long campaigned against vegetable fat use. During the 30-year history of the dispute, the EU Member States debated, *inter alia*, whether chocolate containing vegetable fat is worthy of the name '*chocolate*' and, reportedly, whether such products should better be denominated '*vegelate*'. Directive 2000/36/EC, which was adopted after difficult negotiations in the European Parliament and in the Council, finally marked an end to the dispute, also denominated by some as the '*chocolate war*'. Directive 2000/36/EC acknowledged, as a compromise, that the addition to chocolate products of vegetable fats other than cocoa butter, up to a maximum of 5%, as permitted in certain EU Member States, should be permitted in all EU Member States. In order to guarantee the single nature of the internal market, all chocolate products covered by Directive 2000/36/EC must be able to move freely within the EU under the sales names defined in the Directive.

Directive 2000/36/EC does not provide that any vegetable fat may be used in the manufacture of chocolate products. Cocoa butter has specific properties and the vegetable fats must be cocoa butter equivalents (hereinafter, CBEs). Therefore, they must be defined according to technical and scientific criteria. In particular, the vegetable fats other than cocoa butter, which are permitted in chocolate products, must, individually or in blends, comply with the following criteria: (a) they are non-lauric vegetable fats (like cocoa fat); (b) they are miscible (*i.e.*, capable of being mixed) in any proportion with cocoa butter, and are compatible with its physical properties (*e.g.*, melting point and crystallisation temperature, melting rate, need for tempering phase); (c) they are obtained only by the processes of refining and/or fractionation, which excludes enzymatic modification. There is, however, a significant difference in availability of the CBEs. Of the six permitted oils, only palm oil is grown in large quantities as a commercial plantation crop. The other five so-called exotic tropical oils are essentially forest crops. However, as regards palm oil, only palm mid fraction (hereinafter, PMF) can be used in the manufacture of chocolate. PMF is a fraction of palm oil, which is high in POP triglyceride. POP is the standard abbreviation used for one of the major triglycerides in cocoa butter.

In the follow-up to the adoption and transposition of Directive 2000/36/EC, in the judgment of 25 November 2010, in Case C-47/09, European Commission v. Italian Republic, the Court of Justice of the EU (hereinafter, CJEU) declared that, by providing that the adjective '*pure*' may be added to the sales name of chocolate products, which do not contain vegetable fats other than cocoa butter, the Italian Republic has failed to fulfil its obligations under EU law on chocolate and on food labelling (see *Trade Perspectives*, Issue No. 22 of 3 December 2010). The Italian Legislative Decree No. 178 of 12 June 2003, which transposed Directive 2000/36/EC into Italian law, provided that the words '*pure chocolate*' may be used on the labelling of chocolate products that do not contain vegetable fats other than cocoa butter.

In its judgment, the CJEU noted that the EU has fully harmonised sales names for cocoa and chocolate products in order to guarantee the single nature of the internal market. The CJEU emphasised that those names are both compulsory and reserved for the products listed in EU legislation (*i.e.*, cocoa butter, cocoa powder, chocolate, milk chocolate, family milk chocolate and white chocolate). That being so, the CJEU held that EU legislation makes no provision for the sales name '*pure chocolate*' and does not permit its introduction by national legislation, as in the case of Italy's norm. In Case C-12/00, Commission v. Spain, the CJEU held that the addition of substitute vegetable fats (of up to 5%) to cocoa and chocolate products does not substantially alter their nature to the point where they are transformed into different products and, therefore, does not justify a difference in their sales names. It is important to emphasise that, under Directive 2000/36/EC, the addition of substitute vegetable fats does not make it necessary to use different sales names for such products, but it requires the presence of additional information on the label. In the case of chocolate products to which vegetable fats other than cocoa butter have been added, Article 2 of Directive 2000/36/EC, read in the light of Recital 9 in the Preamble to that directive, ensures

that the consumer is provided with correct, neutral and objective information on the product concerned. In addition to the list of its ingredients, the product label must provide the phrase '*contains vegetable fats in addition to cocoa butter*'.

With respect to international trade, Directive 2000/36/EC aligns EU law with the *Codex Alimentarius*. The respective *Codex Standard 87-1981 for Chocolate and Chocolate Products* (adopted in 1981, revised in 2003 and amended in 2016) provides that the addition of vegetable fats other than cocoa butter shall not exceed 5% of the finished product, after deduction of the total weight of any other added edible foodstuffs, without reducing the minimum contents of cocoa materials. The *Codex* Standard does not provide for a list of CBEs, but states that, where required by the authorities having jurisdiction, the nature of the vegetable fats permitted for this purpose may be prescribed in applicable legislation.

Outside of the EU, India will soon allow vegetable fats in chocolate. Currently, no vegetable fats other than cocoa butter are permitted under India's 2011 Food Safety and Standards (Food Products Standards and Food Additives) Regulations. Under a draft regulation from India's Food Safety and Standards Authority, published in India's Official Gazette on 29 July 2016, up to 5% of non-lauric vegetable fats (*i.e.*, sal, kokum gurgi, mango kernel, barneo tallow, palm oil and shea) will be permitted in chocolate.

As chocolate purists in the EU regard the matter as a quality issue, a solution could be the introduction of an additional (and voluntary) quality label or mark for 100% cocoa-butter-chocolate, as it is done for example in Belgium with the AMBAO label, introduced in 2000, which apparently had little success, although it was supported by the Belgian Government. Artisan chocolatiers and their craft may also be better-supported by other policies than by product standardisation in the internal market. The European confectionery and biscuit association, CAOBISCO, supported the adoption of Directive 2000/36/EC and argued that allowing vegetable fats other than cocoa across the EU was necessary to create a single market for chocolate. Reportedly, CAOBISCO hopes that the 5% vegetable fats rule will remain. A consensus on a harmonised EU law on vegetable fats other than cocoa butter or fat in chocolate was achieved after a year-long debate and a final compromise on consumer preferences and product names. Re-opening the debate would lead to new discussions at EU level, something which has become increasingly difficult with an EU of 28 Member States (still including the UK).

Recently Adopted EU Legislation

Customs Law

- *Commission Implementing Decision (EU) 2016/1878 of 21 October 2016 determining that the temporary suspension of the preferential customs duty established under the stabilisation mechanism for bananas of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other, is not appropriate for imports of bananas originating in Guatemala for the year 2016*

- *Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016 amending Annex I to Council Regulation (EEC) No. 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff*

Food and Agricultural Law

- *Commission Implementing Directive (EU) 2016/1914 of 31 October 2016 amending Directives 2003/90/EC and 2003/91/EC setting out implementing measures for the purposes of Article 7 of Council Directive 2002/53/EC and Article 7 of Council Directive 2002/55/EC respectively, as regards the characteristics to be covered as a minimum by the examination and the*

minimum conditions for examining certain varieties of agricultural plant species and vegetable species

- *Council Decision (EU) 2016/1892 of 10 October 2016 on the signing, on behalf of the European Union, and provisional application of the International Agreement on Olive Oil and Table Olives, 2015*

- *International Agreement on Olive Oil and Table Olives, 2015*

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